

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

COREY E. JOHNSON,

Plaintiff,

v.

Civil Action File No.

CANINE OFFICER MCCOWAN, WARDEN 7:20-cv-00582

JEFFREY KISER, CANINE SERGEANT

STANLEY, COMMONWEALTH OF

VIRGINIA by and through the

Virginia Department of

Corrections, HAROLD W. CLARKE,

in his individual capacity and

official capacity as Director

of the Virginia Department of

Corrections, WILLIAM BARBETTO,

in his individual capacity and

official capacity as Statewide

Canine Program Coordinator

for the Virginia Department

of Corrections, A. DAVID

1 ROBINSON, in his individual
2 capacity and official capacity
3 as Chief of Corrections
4 Operations for the Virginia
5 Department of Corrections,
6 and JOHN DOES 1-4,
7 Defendants.

8 -----

9 VIDEOCONFERENCE DEPOSITION OF
10 CANINE OFFICER BRIAN MCCOWAN

11 DATE: Wednesday, June 8, 2022
12 TIME: 9:19 a.m.
13 LOCATION: Remote Proceeding
14 Washington, DC 20005
15 REPORTED BY: Janel Folsom, Notary Public
16 JOB NO.: 5267183

A P P E A R A N C E S

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A P P E A R A N C E S (Cont'd)

ON BEHALF OF DEFENDANTS CANINE OFFICER MCCOWAN, WARDEN
JEFFREY KISER, CANINE SERGEANT STANLEY, COMMONWEALTH
OF VIRGINIA BY AND THROUGH THE VIRGINIA DEPARTMENT OF
CORRECTIONS, HAROLD W. CLARKE, IN HIS INDIVIDUAL
CAPACITY AND OFFICIAL CAPACITY AS DIRECTOR OF THE
VIRGINIA DEPARTMENT OF CORRECTIONS, WILLIAM BARBETTO,
IN HIS INDIVIDUAL CAPACITY AND OFFICIAL CAPACITY AS
STATEWIDE CANINE PROGRAM COORDINATOR FOR THE VIRGINIA
DEPARTMENT OF CORRECTIONS, A. DAVID ROBINSON, IN HIS
INDIVIDUAL CAPACITY AND OFFICIAL CAPACITY AS CHIEF OF
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Emily Wells, Intern at Office of Attorney General
(by videoconference)

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By Mr. Johnson

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1 P R O C E E D I N G S

2 THE REPORTER: Okay. Good morning. My
3 name is Janel Folsom; I am the reporter assigned by
4 Veritext to take the record of this deposition. We
5 are now on the record at -- let's see -- 9:19 a.m. on
6 Wednesday, June 8, 2022.

7 This is the deposition of Officer Brian
8 McCowan taken in the matter of Corey Johnson vs.
9 Canine Officer Brian McCowan, et al. Civil Action No.
10 7:20cv00582. This is filed with the U.S. District
11 Court for the Western District of Virginia, Roanoke
12 Division.

13 We are all participating via a Zoom
14 video conference, and I am a notary authorized to take
15 acknowledgements and administer oaths in the
16 Commonwealth of Virginia. Parties agree that I will
17 swear in the witness remotely outside of his presence.

18 Additionally, absent an objection on
19 the record before the witness is sworn, all parties
20 and the witness understand and agree that any
21 certified transcript produced from the recording
22 virtually of this proceeding:

1 - is intended for all uses permitted
2 under applicable procedural and
3 evidentiary rules and laws in the same
4 manner as a deposition recorded by
5 stenographic means; and
6 - shall constitute written stipulation
7 of such.

8 At this time will the attorneys on the
9 call please introduce yourself for the record. Mr.
10 Johnson, you can go first.

11 MR. JOHNSON: Good morning. My name is
12 Andrew Johnson of Arnold and Porter. Also with me
13 today is Lauren Wulfe of Arnold and Porter and Dania
14 Qahoush of Arnold and Porter on behalf of the
15 plaintiff in this matter.

16 MR. DAVIS: Good morning. Timothy
17 Davis with the Office of the Attorney General. I have
18 with me Richard Vorhis. We also have two interns,
19 Joshua Barr and Emily Wells on the other line that
20 will be observing today. All here on behalf of the
21 defendants.

22 THE REPORTER: Okay. Perfect.

1 Okay, Officer McCowan, if you will just
2 raise your right hand, I will swear you in.

3 WHEREUPON,

4 BRIAN MCCOWAN,
5 called as a witness, and having been first duly sworn
6 to tell the truth, the whole truth, and nothing but
7 the truth, was examined and testified as follows:

8 THE REPORTER: Okay. You can begin.

9 EXAMINATION

10 BY MR. JOHNSON:

11 Q Great. Good morning, Officer McCowan. How
12 are you today?

13 A Doing all right.

14 Q Good. Could you just for the record state
15 your full name and current title?

16 A Canine Officer McCowan.

17 Q Thank you so much.

18 A Yeah.

19 Q And have you ever had your deposition taken
20 before?

21 A No.

22 Q Okay. So I'm going to go through a little

1 bit of just background to the deposition, kind of,
2 processes. It's a little different than our normal
3 styles of communicating just as humans.

4 So first, I'm going to ask that as we get
5 into the examination that first we agree that you will
6 allow me to finish my question and allow your attorney
7 to state any objection that he may want to make. And
8 then I will, of course, you know, allow you to give
9 your full answer before I ask another question.

10 Does that sound like an okay arrangement for
11 today?

12 A Yes, sir.

13 Q Okay. Wonderful. And you understand that
14 the oath that you just took here for this deposition
15 is the same oath that you would take if we were
16 sitting in a federal court of law, and it has the same
17 impact on you sitting here today. Do you understand
18 that?

19 A Yes, sir.

20 Q Okay. And who else is in the room with you
21 today?

22 A Just myself.

1 Q Just yourself? And since we're in this,
2 kind of, virtual setting, I'm just going to kind of
3 ask you just a couple of just ground questions of
4 what's in the room just because I'm not there.

5 Do you have any screens in front of you?

6 A I have two.

7 Q You have two? And what do you have on those
8 screens?

9 A Exhibit share and video.

10 Q Are those the only applications you have
11 open? The exhibit share and the deposition video?

12 A Yes.

13 Q Okay. Do you have any materials in front of
14 you to help you testify today?

15 A No, sir.

16 Q Okay. Great. And can we agree, since we're
17 just, you know, remote and not in the same room maybe
18 as we would have been a couple years ago that you
19 won't try to access any materials or access your phone
20 for purposes of testifying here today unless you just
21 kind of notify me before you go to do that? Is that
22 okay?

1 A Yes, sir.

2 Q Okay. Great. So in preparing for today's
3 deposition, what did you do?

4 A Spoke with Tim Davis a couple of times. No,
5 I'm sorry. Just once.

6 Q Just once? Okay. And --

7 A But that was about it --

8 Q And for about how long did you speak with
9 Mr. Davis?

10 A Hour and a half?

11 Q Okay. Did you review any documents as part
12 of your conversation with Mr. Davis?

13 A Yes.

14 Q Okay. Did any of those documents refresh
15 your recollection as to any of the events we may be
16 discussing here today?

17 A Yes.

18 Q Okay.

19 MR. JOHNSON: Tim, I'm going to ask
20 because the witness has said that the documents
21 refreshed his recollection for purposes of testifying
22 today that you, you know, at some point, it doesn't

1 have to be right now, just provide us either a list of
2 the Bates stamps of the documents that refreshed his
3 recollection or, you know, if you could zip them over.

4 But just because he's -- he's testified
5 on the record that it's refreshed his recollection, I
6 believe we're entitled to know what those documents
7 are.

8 MR. DAVIS: We can do that.

9 MR. JOHNSON: Thank you so much, Tim.

10 BY MR. JOHNSON:

11 Q And thank you, Officer McCowan. And
12 Officer, is it okay if I call you Officer McCowan? Or
13 is there another way you would prefer for me to refer
14 to you today or is Officer McCowan okay?

15 A That is okay.

16 Q Okay. Thanks so much. Okay. And before we
17 kind of jump in, is there anything or any reason that
18 you can think of as to why you cannot competently
19 testify here today?

20 A No, sir.

21 Q Okay. Great. Wonderful. So now I'm just
22 going to kind of ask you just kind of some background

1 questions just to kind of understand just yourself and
2 your background. So how old are you?

3 A Twenty-seven.

4 Q Twenty-seven? Okay. And can you describe
5 for me your educational background up through your
6 highest level of schooling completed?

7 A High school would be the highest.

8 Q Okay. And did you graduate from high
9 school?

10 A Yes.

11 Q Okay. What year did you graduate?

12 A 2013.

13 Q Okay. Prior to your current role as a
14 canine officer, did you ever have a job?

15 A Yes.

16 Q What jobs did you have prior to being a
17 canine officer?

18 A Several through high school.

19 Q Okay. Could you please describe the jobs
20 that you had in high school?

21 A They were fast food mostly.

22 Q I'm sorry. I just couldn't quite hear that.

1 A They were fast food mostly, and one call
2 center.

3 Q And one call center. Okay. Did you ever
4 have any experience in handling canines?

5 A Yes.

6 Q Okay. And what was your experience in
7 handling canines?

8 A Hunting dogs when I was small. When I was
9 young.

10 Q Okay. And did you do any formalized
11 training as part of your hunting with dogs or was that
12 more of, like, a hobby that you would do with family
13 or friends?

14 A It was a hobby.

15 Q Okay. And just to confirm. After high
16 school, was there any sort of formal education that
17 you went through? Or high school, just confirming,
18 was the highest level of formal education that you
19 completed?

20 A Yes.

21 Q Okay. Thank you. What year did you join
22 the Virginia Department of Corrections?

1 A 2014.

2 Q Okay. And that would be roughly a year
3 after you graduated high school? Is that correct?

4 A Yes.

5 Q Okay. And for today's purposes, just
6 because we'll use this name a lot, is it okay if I
7 just say "VDOC" and we'll both just kind of know I'm
8 referring to the Virginia Department of Corrections.
9 Is that okay?

10 A Yes, sir.

11 Q Okay. Thank you. So why did you join VDOC
12 in 2014?

13 A Lack of employment opportunity at the time.

14 Q Okay. Was VDOC or is VDOC a major employer
15 in the city that you live?

16 A Yes.

17 Q Okay. What city do you live in?

18 A It's not a city. I live in Wise County.

19 Q Wise County. Okay. Thank you. And is Wise
20 County where your high school was as well?

21 A Yes.

22 Q Okay. So when you first joined VDOC in

1 2014, what role were you hired onto?

2 A Correctional officer.

3 Q Okay. And what's a correctional officer's
4 duties and responsibilities?

5 A That's been a long time. Correctional
6 officers, they work the housing units, medical towers,
7 anything there that -- that runs the institution at
8 the officers' level, that's what they do.

9 Q Okay. Thank you. And also, your response
10 just reminded me of something I wanted to cover
11 initially, but we can cover it now. So I did want to
12 mention, I may ask you questions that, you know, you
13 may just not recall and you may not have an answer to
14 because you don't have a memory, which is totally
15 okay.

16 The law is that, though, I am entitled to
17 your best recollection as you sit here today. So if
18 you don't remember something, that is okay.

19 A Yes.

20 Q I want you tell me that you don't remember.
21 I don't want you to guess or speculate on anything.
22 And, you know, if Mr. Davis instructs you not to

1 answer, that's really the only instance where I'm not
2 entitled to an answer is after an explicit instruction
3 by your attorney.

4 Does that make sense?

5 A Yes, sir.

6 Q Okay. Perfect. Great. So how long were
7 you a correctional officer, then, at VDOC before you
8 became a canine officer?

9 A Approximately three years.

10 Q Okay. Did you hold any other roles in
11 between becoming a canine officer after you were a
12 correctional officer?

13 A Yes.

14 Q What were those roles?

15 A A field training officer.

16 Q Okay. And what years were you a field
17 training officer?

18 A Twenty -- it was very -- not for a very long
19 time. It was about six months. The first six months
20 of 2018, I believe.

21 Q Okay. So you were a correctional officer
22 from 2014 to roughly the beginning of 2018 and then

1 the first six months, roughly, of 2018, you were a
2 field training officer. And then after that, about
3 six months into 2018, you became a canine officer?

4 A Yes, sir. You're still a correctional
5 officer with -- you just get an FTO certification.
6 You're still a correction -- you never stop being a
7 correctional officer. I'm a correctional officer
8 today.

9 Q Understood. My apologies. Understood.

10 A That's fine.

11 Q Thank you for clarifying. And as a field
12 training officer, can you explain that role to me a
13 little bit?

14 A Layman's terms, it -- you train trainees.
15 They come in from the job interview, they go through
16 the Phase 1, Phase 2. They then go the academy and
17 then a field training officer takes them and runs them
18 through everything that goes on inside the
19 institution.

20 Q Okay. And where were you a field
21 corrections officer?

22 A At Red Onion State Prison.

1 Q Okay. And were you also a correctional
2 officer -- well, before you became a field training
3 officer, were you at Red Onion State Prison?

4 A Yes.

5 Q Okay. And when you became specialized in
6 handling canines, were you also at Red Onion for that
7 entire time?

8 A Yes.

9 Q Okay. And have you been at any other
10 facility other than Red Onion while you've been
11 employed at VDOC?

12 A Yes.

13 Q Okay. What facility is that?

14 A Several.

15 Q Could you list them?

16 A Yes. Let's see. Sussex I and II, Indian
17 Creek Correctional, Wallens Ridge State Prison, Keen
18 Mountain Correctional Unit, River North Correctional
19 Center. I think that's it.

20 Q Okay. And well, I apologize for this
21 question but do you recall about approximate dates you
22 were at each facility? I know that's quite a long

1 list, but do you roughly recall the dates or the
2 position you held while you were at each of those
3 facilities?

4 A I know the position, but the dates I do not
5 remember.

6 Q Okay.

7 A I was canine at that time.

8 Q Could you clarify that? At what time?

9 A I was canine at the time as I went through
10 those institutions. The position I held was canine.

11 Q Got it. So you were a canine officer at
12 each of these facilities?

13 A Yes, sir.

14 Q Got it. Okay. And just to clarify, though,
15 the only facility where you have been a correctional
16 officer and a field training officer is Red Onion?

17 A Yes, sir.

18 Q Okay.

19 A May I clarify the last question?

20 Q Yep.

21 A We only -- Red Onion is my home base. Okay?
22 The only time we ever go to other institutions, we're

1 just visiting. Right?

2 Q And so why would you be visiting another
3 institution?

4 A Short staffed. Short -- the short staff
5 mostly is the reason.

6 Q Okay. And how often do you in your role as
7 a canine officer get called out to fill in at another
8 facility that's short staffed?

9 A Since COVID-19, several times a year.

10 Q Okay. When you go to a different facility
11 as a canine officer, do you travel with your assigned
12 canine, or do you use a different canine when you're
13 at those facilities?

14 A You travel with your assigned canine.

15 Q Okay. When you became a field training
16 officer for the six months in 2018, was that
17 considered a promotion at the time?

18 A There is a slight pay raise, but it is not a
19 promotion.

20 Q Okay. So when you became a canine training
21 officer in 2018, did you have to go through any sort
22 of training to attain that role?

1 A Yes.

2 Q Can you describe that training for me?

3 A It's a 12-week, 480-hour class.

4 Q I couldn't quite hear the last thing that
5 you said. I apologize.

6 A It's a 12-week total of 480-hour class.

7 Q Okay. And do you recall that the 12-week,
8 480-hour program how those hours were broken out into
9 the different modules of training that you were going
10 through?

11 A I can't say that I recall exactly how they
12 did it. It's been five years ago.

13 Q Understood. Do you generally recall the
14 types of things that you were being trained on during
15 those 480 hours of training?

16 A Yes.

17 Q Could you describe what you generally recall
18 about the training that you received?

19 A They trained in on and off-lead obedience.
20 On and off-lead apprehension, controlled aggression,
21 hesitation, policy and procedure review. That's all
22 that's coming to me at the moment. I may -- let me

1 think about it for just a moment, please.

2 Q Of course. Take your time.

3 A Obstacle course training. That's all that's
4 coming to me at the moment, sir.

5 Q Okay. Thank you. And when you were going
6 through training, were you assigned a canine at the
7 outset of training?

8 A Yes.

9 Q And how were you assigned a canine?

10 A They -- the instructors pick and place of --
11 with trainees. They see what canines match what
12 handlers. Dogs have a personality just like humans
13 do.

14 Q Understood. And do you have any
15 understanding of what the supervisors are looking for
16 when they are evaluating a dog's personality to match
17 to a handler?

18 A No, sir. I mean, unfortunately, I am not an
19 instructor.

20 Q Do you have any understanding in your
21 particular situation why your supervisors thought your
22 particular canine was appropriate to be matched with

1 you?

2 A No, sir.

3 Q Okay. Do you recall the name of the canine
4 that you were assigned in your training course in
5 2018?

6 A At that point in time, I would say that they
7 give you whatever at that point in time was available
8 to them to give you. And at that point in time, it
9 was -- Tessa was her name.

10 Q Understood.

11 A I believe.

12 Q Understood. And is Tessa the canine that
13 you trained with for the entire 12-week, 480-hour
14 training course?

15 A No.

16 Q Okay. What other canines did you train with
17 during your 480-hour, 12-week training course?

18 A Rojo.

19 Q Was that Rojo?

20 A Yes.

21 Q Okay. And about how many hours of your
22 training course did you spend training with Tessa?

1 A They were both technically certified dogs at
2 that point in time. By policy, I would've only have
3 had to have done an 80-hour school with either one of
4 those dogs, but I had not been certified at that time,
5 so I had to do the full 480-hours. The dog itself did
6 not need the full 480-hours.

7 Q Understood. So let me repeat that back
8 just to make sure I understand. So the dogs
9 themselves were certified, however you had a separate
10 480-hour training component that you needed to
11 complete for your own certification.

12 And that training that you needed to
13 complete at times required you to handle a canine, and
14 the two canines that you handled as part of your
15 completion of the 480 hours was Tessa and Rojo. Was
16 that correct?

17 A Yes.

18 Q Okay. Of the times of that 480 hours that
19 you were required to use a canine to train, how many
20 of those hours did you use Tessa as opposed to Rojo?

21 A I'm going to say it's pretty 50/50.

22 Q Okay. About half?

1 A Yeah. About half.

2 Q Okay. And of that 480 hours, about how many
3 of those hours required you to handle a canine as part
4 of the training as compared to sitting in a class or
5 some other form of the training?

6 A Very little of the canine school is
7 classroom. It's all, for the most part, field work.

8 Q Understood. And when you say "mostly field
9 work," roughly speaking are we talking 90 percent
10 field, ten percent class or what percentages would you
11 assign to the classroom component versus the field
12 component?

13 A I would say 90 -- 85/15.

14 Q Understood. And that's 85 percent field, 15
15 percent classroom?

16 A Yes.

17 Q Okay. And when you're in the field, where
18 are you trained?

19 A There's several different locations, sir.

20 Q Okay. Could you name them for me?

21 A At that point in time, we were using an
22 obstacle course behind the Abingdon Regional Jail.

1 But just about every institution that has canine has
2 an obstacle course.

3 Q Okay. Were there any other locations that
4 you were trained at other than the jail that you just
5 mentioned?

6 A At that point in time, no.

7 Q Okay. And the 15 percent classroom
8 component of your training, where did that occur?

9 A There is a trailer above the obstacle course
10 that the Virginia State Police also use during their
11 canine schools.

12 Q Understood. So that's at that same jail you
13 mentioned a moment ago?

14 A Yes.

15 Q Okay. Thank you. How many other
16 individuals were in your training program, the 480-
17 hour, 12-week canine training program with you?

18 A I don't recall.

19 Q Okay. Do you have an estimate? 10? 15?

20 A Five.

21 Q Understood. And do you recall? Did the
22 five other individuals also train with Tessa and Rojo?

1 A No, sir.

2 Q Okay. Do you recall, did the other trainees
3 also train with multiple canines?

4 A Some did, some didn't.

5 Q Do you recall how many did and how many
6 didn't?

7 A No, sir.

8 Q Okay. Do you recall the maximum number of
9 canines an individual in your training class trained
10 with?

11 A Two.

12 Q Two? Okay. All right. Are you familiar
13 with the concept of bark and hold?

14 A No, sir.

15 Q In part of your 12-week, 480-hour training
16 program, did you ever hear the phrase "bark and hold"?

17 A Can't say that I did. I -- it's -- I, as I
18 said, it's been a very long time since the -- my
19 first -- my basic canine school. I honestly couldn't.
20 I do not -- I don't recall perfectly.

21 Q Understood. As you sit here today, are you
22 familiar with that phrase?

1 A I have heard of it, but I do not under -- I
2 do not understand the concept.

3 Q Understood. How have you heard of it?

4 A Just through passing from older instructors.
5 Just -- it's been a very long -- I have heard it, but
6 it's been a very long time ago.

7 Q Understood. Are you familiar with the
8 concept of bite and hold?

9 A Yes.

10 Q How are you familiar with that concept?

11 A That is part of the certification that you
12 must get when certifying these canines. They must
13 bite and hold decoys.

14 Q Okay. Can you explain what you were trained
15 on as part of your certification for bite and hold?

16 A The -- it's the full bite routine. On and
17 off-lead apprehensions, controlled aggression, passive
18 decoy. That should be the full routine.

19 Q Okay. Was there anything else that you were
20 trained on to handle a canine in a bite and hold
21 command?

22 A No. That pretty well covered -- other than,

1 I apologize, the verbal disengagement of that bite and
2 hold.

3 Q Okay. And can you explain to me the
4 training you received on the verbal disengaging of a
5 bite hold?

6 A It's the verbal command that you say that
7 the dog understands when he hears that verbal command
8 to release.

9 Q Okay. And how --

10 A From that bite and hold.

11 Q Understood. I apologize. And how are you
12 trained to instruct your canine to release after a
13 bite and hold?

14 A Can you repeat the question, sir? I don't
15 believe I --

16 Q Yep. What is the specific training that you
17 go to train your dog specifically to react to you when
18 he or she is in a bite and hold and you tell them to
19 release?

20 A The specific training as far as bite hold, I
21 have -- I am not an instructor. So as far as -- as
22 far as speculating on how it's trained, I couldn't --

1 I don't -- I don't know. I couldn't -- couldn't say.

2 Q Okay. So can you help me understand then
3 how you become comfortable in your training when you
4 give a command to your canine, that the canine will
5 release after a bite and hold?

6 A They simulate it during training.

7 Q And what --

8 A You become comfortable by -- you become
9 comfortable by doing.

10 Q Okay. So then what do you mean by
11 "simulate" during your training?

12 A So on -- when you're on a bite and hold
13 situation, you do dozens of those during school. You
14 give the command, the dog releases. Over time, you'll
15 become comfortable with it and trust that the dog will
16 do it every time that you ask the dog to do so.

17 Q Okay. Of the 85 percent of the field work
18 training that you went through, about how many hours
19 of that portion of your training were committed to
20 training on bite and hold and release as we've been
21 discussing that just, you know, recently.

22 A Like -- unfortunately, I -- I don't want to

1 speculate. I'm not -- I'm not an instructor, so I'd
2 rather not guess.

3 Q Okay. Do you have a sense? Was it, you
4 know, 50 percent of that time or was it less than 50?

5 A I'm -- I -- I apologize, sir. I don't know.

6 Q That's okay. No problem.

7 A And I'd rather not speculate on it.

8 Q Understood. I appreciate that. Thank you.

9 Are you familiar with a canine named Shadow?

10 A Yes.

11 Q And how are you familiar with Shadow?

12 A He was my assigned canine from 20 -- let's
13 see. Mid-2018 to just until about four or five months
14 ago.

15 Q So Shadow was your assigned canine from
16 roughly 2018 through the end of 2021. Is that
17 correct?

18 A End of 2022. I'm sorry. Now the end of
19 2022, but the -- the first month. I would say he
20 retired in March of 2022, and I had him up until
21 January of 2022.

22 Q Understood. So Shadow is now retired?

1 A He is.

2 Q Understood. Prior to Shadow being assigned
3 to you in 2018, did you train with Shadow?

4 A Nope.

5 Q Was Shadow the first canine that you were
6 assigned after completing the canine course?

7 A No.

8 Q What canine were you assigned when you first
9 completed the course?

10 A Tessa.

11 Q And how long were you assigned Tessa?

12 A From probably -- I would say January of 2018
13 up until June of 2018.

14 Q Okay. And were you at Red Onion State
15 Prison the entire time that Tessa was assigned to you?

16 A Yes.

17 Q Okay. And that's other than if you were
18 doing any short-term filling in for short-staffed
19 individuals or short-staffed individuals or short-
20 staffed facilities? Or was Tessa only at Red Onion?

21 A Only at Red Onion at that point in time.

22 Q Okay. And after Tessa was assigned to you

1 until June of 2018, who was your next canine assigned
2 to you?

3 A I don't recall, sir.

4 Q Okay. Did you have a canine assigned to you
5 in between having Shadow assigned to you and Tessa
6 assigned to you?

7 A No.

8 Q Okay. So Shadow would have been assigned --
9 Shadow was the next canine you were assigned after
10 Tessa. Is that correct?

11 A Yes.

12 Q Okay. And where did Shadow retire?

13 A He is currently at Red Onion.

14 Q Excuse me. Why did Shadow retire? Sorry.
15 I misspoke.

16 A Why did Shadow retire?

17 Q I apologize.

18 A Okay. Health issues.

19 Q Okay. Do you know what those health issues
20 were?

21 A He has several.

22 Q Okay. Could you describe them for me?

1 A He constantly gets skin infections. The
2 reason that he was taken out of service was because he
3 contracted MRSA, I believe.

4 Q Okay.

5 A And he retired because of age after that.
6 He's quite old.

7 Q Okay. As you sit here today, do you have an
8 understanding of any other medical conditions that
9 caused Shadow to retire?

10 A No, sir. It was mostly due to age.

11 Q Okay. When Shadow was first assigned to
12 you, what was your relationship with Shadow like? Did
13 you take to each other quickly or did you have to
14 train together to be able to effectively work
15 together?

16 A It takes years to build. It takes -- let's
17 see. Can you repeat the question, sir? I apologize.

18 Q Sure. No problem. So you said earlier, I
19 believe, that you trained with Tessa and that Tessa
20 was your first assigned canine. Is that correct?

21 A Yes.

22 Q So after Tessa was unassigned to you and

1 Shadow was assigned to you, what was your experience
2 with Shadow like as compared to Tessa?

3 A He was -- he was obviously different. Every
4 dog has a different personality, but we done well
5 together.

6 Q Okay. Could you explain to me specifically
7 what you mean by "a different personality"?

8 A Just Tessa was a female, Shadow was a male.
9 As far as -- well, for instance, Tessa bit me once
10 while working inside the institution. Shadow never
11 tried, for example.

12 Q Okay. Were there any other personality
13 differences between Tessa and Shadow that you recall
14 sitting here today?

15 A Shadow was much more social.

16 Q Okay. And what do you mean by "social"?
17 Social with --

18 A Social towards human beings.

19 Q Okay. And do you know sitting here today
20 what happened to Tessa?

21 A No. I'm sorry. I apologize. I do not.

22 Q That's okay. Do you know if Tessa is

1 retired or still on active duty?

2 A I do not. I -- she was quite old then. I
3 would say if she has not passed away, she has retired
4 by now.

5 Q Understood. How old was Shadow when you
6 were assigned to him?

7 A Three.

8 Q And how old was Tessa when you started
9 training with her?

10 A That I don't recall.

11 Q Okay. Do you know if it's common for canine
12 officers to train with a different dog or a different
13 canine than they are assigned in the field?

14 A Can you repeat the question, sir? I
15 apologize. I don't believe I understood that.

16 Q No problem. Of course. So I believe you
17 said that you -- well, let me strike that. Do you
18 know if it's common, as you sit here today, for
19 officers to train with one canine, complete training,
20 and then be assigned a different canine for their
21 field assignment after the canine training school?

22 A It's not a -- a usual -- the only thing that

1 I can see that would happen in that instance would be
2 that that particular dog at that point in time did not
3 meet certification, and the officer had to take
4 another canine to be able to certify and work inside.

5 Q Are you aware of any incidents since your
6 time at VDOC where that's actually happened?

7 A No, sir.

8 Q Okay. Are you familiar as you sit here
9 today, since your time at VDOC, of any canine handler
10 having a different canine for their first field
11 assignment from the canine that they trained with?

12 A I don't -- I -- I couldn't recall, sir.
13 There's been so many come and go.

14 Q So I believe that you said that you had
15 Tessa for about six months before Shadow was assigned
16 to you. Is that correct?

17 A Yes.

18 Q And how did it come to be that Shadow was
19 assigned to you after that six-month period over
20 Tessa?

21 A I don't believe I understand what you're
22 asking me -- of me, sir.

1 Q Sorry. Let me repeat that. Sure. Do you
2 recall as you sit here today, why were you assigned a
3 new canine in June of 2018?

4 A My personality and her personality did not
5 meld well together. And as I said before, she bit me.

6 Q Okay. Was Tessa's biting you the reason
7 that you were assigned a new canine?

8 A Partly. In part, yes.

9 Q Okay. Do you know as you sit here today how
10 often canine handlers are assigned a new canine?

11 A No, sir. It's random.

12 Q Okay. Do you know, is there a VDOC policy
13 or practice that requires a regular transfer or
14 reassignment of canines and their handlers?

15 A I do not. I don't know, sir.

16 Q Okay. Is it your understanding that canine
17 assignments to canine officers are done on a one-time
18 basis and only revisited if there is a reason, such as
19 you were explaining earlier, to have a reassignment
20 completed?

21 A So you're -- there are no -- they are not
22 assigned -- they are not assigned or reassigned to

1 anybody else unless you fail a quarterly certification
2 or you do not necessarily have to -- you do not
3 necessarily have to reassign your canine after failing
4 a two-week certification. This is just what the
5 policy reads.

6 After failing a two-week certification, you
7 have to -- or, I'm sorry, a quarterly certification.
8 You must then do a two-week remedial with an
9 instructor, as policy reads if you fail a quarterly or
10 annual certification. And at that point in time, the
11 canine can be reassigned if you are unable to score or
12 recertify that particular canine.

13 Q Okay. Are you aware of any incidents where
14 a canine and the handler, since you've been at VDOC,
15 have failed their quarterly or annual certification
16 and had their canine reassigned?

17 A I can't recall, sir.

18 Q Have you ever failed an annual
19 certification?

20 A Yes.

21 Q When?

22 A With Tessa.

1 Q What year?

2 A It was during -- can't speculate on the
3 month, but I know it was 2018. That was part of the
4 reason why of having Shadow assigned to me. She bit
5 me, and that next -- I continued working her until the
6 next quarterly.

7 She then failed her quarterly. I was then
8 assigned Shadow and from then, I done an 80-hour class
9 with Shadow and was certified and had been since until
10 his retirement.

11 Q Understood. So maybe let's take a quick
12 step back to just kind of talk back through that a
13 little bit. So do you recall about the month when
14 Tessa bit you?

15 A I do not, sir.

16 Q Okay. As you sit here today, is it your
17 recollection that Tessa bit you and then the next
18 quarterly certification that arose for Tessa, Tessa
19 failed that certification because she bit you?

20 A I don't believe there is correlation. No,
21 sir.

22 Q Okay. Do you have an understanding as you

1 sit here today why Tessa failed the quarterly
2 certification?

3 A I do not, sir.

4 Q Okay. Do you recall as you sit here today
5 the circumstances that caused Tessa to bite you?

6 A It was random, sir. No.

7 Q Could you explain to me what you mean by "it
8 was random"?

9 A I was -- there was not particularly any
10 reason that she bit me other than that she was
11 particularly handler-aggressive.

12 Q Understood. What were your physical
13 surroundings and where were you when Tessa bit you?

14 A I was inside the institution.

15 Q Okay. Is that the Red Onion Institution?

16 A Yes.

17 Q Okay. Where in Red Onion specifically were
18 you when Tessa bit you?

19 A I was on Alpha and Bravo side of the
20 institution.

21 Q Okay. Could you assume I don't know what
22 that means and explain that to me?

1 A There is two different sides to the
2 institution as you come through it. There is an admin
3 building that runs through the middle, A and B, C and
4 D.

5 A and -- Alpha and Bravo buildings are here
6 and here. Charlie and Delta are here and here. And
7 there's an admin building where the kitchen, the chow
8 halls, and all that is -- runs between those two.

9 Q Okay. And you were in the Alpha building at
10 the time that Tessa bit you. Is that correct?

11 A No, sir.

12 Q Okay. Where were you when Tessa bit you?

13 A I was patrolling -- I'm sorry. I was
14 monitoring movement on A/B yard. I was on the yard at
15 that point in time.

16 Q Okay. Understood. And then you were on the
17 yard patrolling, and then Tessa bit you as you
18 described, randomly?

19 A Yes.

20 Q Okay. Understood. And I believe you said
21 earlier, other than -- well, I believe you testified
22 earlier that you do not believe that Tessa biting you

1 is the reason why she failed her quarterly
2 certification. Is that correct?

3 A I do not personally believe there is any
4 correlation. No, sir.

5 Q Understood. But you don't have an awareness
6 as to why Tessa failed her quarterly certification
7 following the bite?

8 A No, sir.

9 Q Understood. Okay. So after Tessa failed
10 her certification, I believe you just said that you
11 were assigned Shadow and that you and Shadow completed
12 80 hours of training. Is that correct?

13 A Yes.

14 Q Okay. Was that training completed before
15 you were deployed back into Red Onion for, you know,
16 your patrol purposes?

17 A Yes.

18 Q Okay. And can you describe that 80 hours of
19 training for me in as much detail as you can remember
20 sitting here today?

21 A You must certify on everything everybody --
22 on every aspect of the training that we do -- you do.

1 You have to certify within those 80 hours.

2 So a certified handler already knows
3 everything he needs to as far as the basics go, so
4 does the canine itself. So the only thing the policy
5 requires of us is an 80-hour school to more or less
6 bond with each other and certify on what we need to
7 certify on by policy to be able to utilize those
8 canines in an institution.

9 Q Understood. So I'm going to ask you just a
10 couple of questions to help me just kind of understand
11 just similarities and differences between the 80-hour
12 program and the 480-hour training program that we
13 spoke about earlier.

14 So just yeah. If you could, that's kind of
15 the context for some of these questions. So when you
16 were testifying earlier about the 480-hour program,
17 you said that Tessa and Rojo were already certified.
18 Is that correct?

19 A Yes.

20 Q Okay. And I believe you just testified just
21 now that Shadow was not certified and that you were
22 going through the certification with Shadow. Is that

1 correct?

2 A No, sir.

3 Q Okay.

4 A Shadow was certified.

5 Q Okay. So who certified Shadow, Tessa, and
6 Rojo?

7 A They were certified by different individuals
8 at different times, sir.

9 Q Do you know the specific individuals that
10 certified Shadow, Tessa, or Rojo?

11 A No, sir.

12 Q Do you know the certification process that
13 Shadow, Tessa, or Rojo or any canine went through in
14 order to be certified?

15 A Yes, sir.

16 Q Could you explain that to me?

17 A Yes, sir. They have to complete the full
18 bite routine, full obedience routine, full obstacle
19 course routine, and an area building search.

20 Q Okay. And when they're undergoing this
21 certification, is it VDOC employees who are conducting
22 this training or is it outside consultants that are

1 conducting this training?

2 A VDOC employees, sir.

3 Q Understood. Is there anybody that is part
4 of the canine program that is not a VDOC employee?

5 A No, sir.

6 Q Okay. So it would have been a VDOC canine
7 trainer who certified Tessa, or Rojo, and Shadow?

8 A Yes, sir.

9 Q And am I using the correct title for the
10 individuals who would have done that certification?
11 Are they a canine training officer or what is the
12 title of the people who train and certify canines for
13 your use?

14 A The instructors at that point in time
15 were -- most of them were sergeants over channels at
16 the institutions.

17 Q Okay. And so would the --

18 A I apologize. There's somebody at the door.

19 Q No problem. We could take a quick break and
20 go off the record if you need to handle it. That's
21 okay.

22 A That's okay, sir. It was -- it's not --

1 it's not important.

2 Q Understood. Okay. Maybe just since we've
3 taken a pause, you know, we can take a break whenever
4 you'd like, just so you know. So if at any time you
5 need to take a break, let me know.

6 I'm going to try about every hour, you know,
7 unless we're kind of in a back and forth try to be
8 mindful of the time. But please don't hesitate. If
9 you need a moment, just ask, and it's more than okay.

10 A Okay.

11 Q Okay. So a moment ago, we were just
12 discussing the individuals who are responsible for
13 certifying canines, and I believe you testified that
14 the individuals who perform those certifications are
15 sergeants within the canine program at VDOC. Is that
16 correct?

17 A Most of them. Yes, sir.

18 Q Okay. When you say "most," what do you mean
19 by that?

20 A At that point in time, policy read that --
21 that you could as a -- it's been so long. I
22 apologize. Can you repeat the question for me?

1 A Sure.

2 Q I'm not sure I completely 100 percent
3 understand what you're trying to ask of me.

4 A Understood. I believe that you testified
5 that most of the individuals who train canines are
6 sergeants within VDOC's canine unit. Is that correct?

7 A I apologize. That was a mistake by -- at
8 that time, it was all of the instructors at that point
9 in time were sergeants.

10 Q Understood. And am I using the department
11 that they're affiliated with correctly? They're
12 sergeants within --

13 A The canine operations. Yes, sir.

14 Q Understood. And is their job solely to
15 train canines to be certified?

16 A Those and their officers'.

17 Q Understood. So is it the same pool of
18 trainers who train both canines and their handlers?

19 A At that point in time, yes.

20 Q Okay. A few times, as I've asked questions
21 about the training, you've testified "at that time."
22 Has the training program changed since you went

1 through it that's leading you to say "at that time"?

2 A Not to the extent -- the training itself has
3 not changed. The instructors over the years have
4 changed, and people have retired, left for better
5 jobs, whatever the case may be.

6 Q Understood. So as you sit here today, is it
7 your understanding that there are other individuals
8 other than sergeants within the canine operations unit
9 that are conducting canine trainings?

10 A Now?

11 Q Yes, sir.

12 A Yes.

13 Q And can you describe for me who those people
14 are?

15 A They're still officers, sir. They just --
16 instead of having a supervisory role, they are those
17 officers who have volunteered to be able to instruct
18 schools or through canine operations have chosen to
19 instruct schools.

20 Q Understood. As you sit here today, do you
21 have any understanding of whether or not those
22 officers who volunteer to train have to undergo any

1 sort of training or specialized schooling in order to
2 be allowed to train canines and/or handlers?

3 A Yes. I -- I don't personally know what the
4 actual -- it's one of those things I'd rather not
5 speculate on because I would be guessing at probably
6 about 75 percent of it, sir. I apologize.

7 Q That's okay.

8 A 'Cause I -- I have not volunteered to be an
9 instructor. I -- I do not know.

10 Q Understood. But I believe you testified,
11 though, that at the time you went through the canine
12 training school and at the time that you completed the
13 80-hour certification program with Shadow, that the
14 individuals that trained you were sergeants within
15 VDOC. Is that correct?

16 A Yes.

17 Q Understood. Okay. So were the programs or
18 modules that were part of the 80-hour program that you
19 went through with Shadow entirely the same as the
20 modules that you went through during the 480-hour
21 program or were there differences?

22 A They are -- they were the same.

1 Q Okay. Can you explain to me how they were
2 the same if one takes 480 hours and the other takes
3 80?

4 A 'Cause the 480-hour school, you're coming
5 into a -- the operation blank. You don't know
6 anything about the trainings for the basic canine
7 school. You have to have a 480-hour basic canine
8 school to be able to work inside.

9 After you've already completed the 480-hour
10 class, all you must do during the 80-hour class is
11 certify.

12 Q Understood.

13 A You already know all the basics from your
14 original 480-hour class.

15 Q Understood. So you're a veteran, and you
16 understand the program, and you're going through it
17 and --

18 A Yeah.

19 Q Okay. And so there's efficiencies in the
20 training that are gained as a result of that baseline
21 knowledge?

22 A Yes, sir.

1 Q Is that what you're testifying? Okay.

2 Excuse me. I believe that you testified that part of
3 both the 480-hour program and the 80-hour program is
4 training on patrol canine usage. Is that correct?

5 A Yes.

6 Q Okay. Are there any other forms or
7 modalities of use of canines that you were trained on?

8 A As far as?

9 Q For example -- sorry. That was probably a
10 poorly worded question. So were you trained on
11 contraband or narcotics detection for --

12 A No, sir.

13 Q Were you trained on any other use of canines
14 in a prison context other than a patrol canine usage?

15 A No, sir.

16 Q Okay. Have you ever received training on
17 any canine usage in a correctional setting other than
18 a patrol canine usage?

19 A No, sir.

20 Q Do you have any awareness or understanding
21 as to whether or not the other canine officers within
22 VDOC ever received training on other forms of canine

1 usage in a correctional setting, other than patrol
2 canine use?

3 A No, sir.

4 Q Understood. And I believe that you
5 testified that all of your training is provided to
6 you -- sorry. Let me rephrase. I apologize.

7 I believe that you testified earlier that
8 all of your training as a canine officer while at VDOC
9 has been provided to you by VDOC. Is that correct?

10 A Yes, sir.

11 Q And you have received no outside canine
12 training, other than what VDOC has provided to you.
13 Is that correct?

14 A Yes, sir.

15 Q Okay. So going back to earlier, I was
16 asking a few questions about just your comfort level
17 around giving a command. For example, we were talking
18 about earlier release command to a canine.

19 And I wanted to ask you about your training
20 around deploying your canine. Can you talk to me
21 about or explain to me what specifically you were
22 trained to do when you are in a situation where you

1 potentially need to use canine force in a correctional
2 setting?

3 A You're asking as far as the training goes?

4 Q Yes, sir.

5 A You do -- you would run your training no
6 different than you would do it in real life.

7 Q Okay. So does that mean that you were
8 trained on situations where use of force was not
9 appropriate?

10 A Yes.

11 Q Can you explain those situations to me?

12 A When they become compliant, there is no use
13 of force. That's it. It's pretty black and white as
14 far as -- as far as the use of force goes.

15 Q Okay. So I believe that you just said that
16 you're trained to use force until an inmate complies
17 with your command. Is that your understanding?

18 A As far as policy is written, yes, sir.

19 Q Okay. Is there a difference in your
20 understanding of the policy versus the practice?

21 A No, sir.

22 Q Okay. Is there a reason why you said "as

1 the policy is written" as opposed to that's how you do
2 it?

3 A Because the -- the way the policy is
4 written, you must follow the policy in order to keep a
5 job.

6 Q Understood. So could you break down what
7 you mean by, "until somebody complies"? So for
8 example, say you are called into a pod, and you've
9 been instructed that two inmates are fighting. And
10 you show up at the pod, and everybody is lying down.
11 Would you release your canine?

12 A No, sir.

13 Q Okay. So can you help me understand. What
14 is that you're trained to look for and do when you
15 arrive on scene regarding whether or not the use of
16 force of your canine is proper?

17 A Aggressive actions.

18 Q What does that mean?

19 A Aggressive actions toward other individuals.
20 One individual is showing aggressive actions, close
21 fisted, approaching in a threatening manner. Anything
22 as far as any kind of aggression -- aggressive action,

1 use of force can be utilized.

2 Q Okay. And I believe you said the way you're
3 trained is that you are trained to look for a closed
4 fist to identify whether or not an individual is -- or
5 whether use of force is appropriate. Is that correct?

6 A No, sir. A closed fist does not necessarily
7 give way to aggressive action. It can be a multitude
8 of things.

9 Q Okay. so could you explain to me everything
10 that you have been trained to look for to determine
11 whether or not an inmate is exhibiting aggressive
12 behavior?

13 A Assaultive -- assaultiveness and
14 combativeness. Persistence towards that as far as what
15 orders they give.

16 Q Okay. And when you say "assaultiveness,"
17 can you explain to me in just layman's terms what you
18 mean by assaultiveness?

19 A Assaultiveness, whether or not they have
20 stopped fighting.

21 Q Okay. Other than stopping fighting, is
22 there anything that you look for to determine whether

1 or not aggressive behavior is being exhibited?

2 A Running, not complying with orders. Running
3 towards inmates, staffs, things of that nature.

4 Q Okay. What about walking away from an
5 inmate or staff?

6 A Very possible. It's not out of the realm of
7 possible.

8 Q Okay. And are all the things that you just
9 described to me, is that part of your training that
10 you receive as a canine officer?

11 A Yes, sir.

12 Q Okay. So all of those things that you just
13 described are specific components of your training
14 program that you are trained to look for when you come
15 on scene to identify whether or not an inmate is
16 exhibiting aggressive behavior such that use of force
17 is proper?

18 A Yes, sir.

19 Q Okay. Is the term "assaultive" part of your
20 training?

21 A I don't -- yes, sir.

22 Q Okay. And do you recall how your training

1 defines "assaultive"?

2 A Assaultive being anything that appears to be
3 an aggressive action towards another human being.

4 Q Okay. And is that the definition that you
5 recall being provided or is that the definition that
6 you recall as you sit here today?

7 A It's as I recall as I sit here today.

8 Q Is that a pretty close approximation to what
9 you were trained at the time?

10 A Yes, sir.

11 Q Okay. And just to confirm, your training,
12 was this part of both the training that you went
13 through in the 480-hour program as well as the 80-hour
14 program with Shadow?

15 A Yes, sir.

16 Q Okay. Do you recall there being any
17 differences in how you were trained on use of force
18 between when you went through the training with Tessa
19 as compared to when you went through the training with
20 Shadow?

21 A No, sir.

22 Q Since you became a canine officer, do you

1 recall any changes to how you've been trained to
2 utilize canine force as a canine handler?

3 A No.

4 Q Okay. So then it's your testimony here
5 today that the use of force policy as applied to
6 canines has been the same at VDOC ever since you've
7 been a canine officer since 2018. Is that correct?

8 A I believe -- I apologize. I believe that
9 they're -- I'd rather not speculate on it because I
10 don't know what the policy used to be. I can't
11 remember what the policy used to be. I do know what
12 it is now. But for the most part, I don't believe it
13 has changed much.

14 Q In carrying out your day-to-day duties, do
15 you recall since 2018 ever thinking or having an idea
16 that the way in which you utilized your canine has
17 changed?

18 A I apologize, sir. Can you repeat that
19 question? I don't believe I understood you.

20 Q Sure. Since you became a canine officer in
21 2018, do you ever recall thinking that the way in
22 which you use your canine has changed as a result of a

1 policy change?

2 A If the policy changes, then yes, sir.

3 Q Do you recall policy changing as you sit
4 here today?

5 A Policy changes frequently as times evolve,
6 what have you. Policy changes frequently. As far as
7 use of force goes, not to my knowledge. No, sir. It
8 has not changed.

9 Q Okay.

10 MR. DAVIS: Andy, I'd ask that we take
11 a break after this next question if that's good with
12 you?

13 MR. JOHNSON: Yeah. Absolutely. Maybe
14 just a couple clarifying questions and then we'll take
15 a break if that's okay?

16 MR. DAVIS: Okay. All right.

17 MR. JOHNSON: Okay.

18 BY MR. JOHNSON:

19 Q And Officer McCowan, I did just want to
20 confirm. When we're talking about policy changes
21 here, we're talking about the operating procedures.
22 Correct?

1 A Yes, sir.

2 Q Okay. Understood.

3 MR. JOHNSON: Okay, Tim. Why don't we
4 take, I don't know, 10 or 15 minutes? Does that sound
5 okay?

6 MR. DAVIS: Sure. So we reconvene at
7 10:45?

8 MR. JOHNSON: Yeah. Does that work for
9 everybody?

10 THE REPORTER: Yep.

11 MR. JOHNSON: Okay. Let's go off the
12 record then.

13 THE REPORTER: Okay. We're off record
14 at 10:33 Eastern Daylight Time.

15 (Off the record.)

16 THE REPORTER: Okay. We're back on the
17 record at 10:46 a.m. Go ahead.

18 BY MR. JOHNSON:

19 Q Okay. So Officer McCowan, when we broke we
20 were talking about your training on use of force as it
21 applied to your canine. So I was hoping maybe we
22 could kind of go back and start there.

1 So do you recall specifically as it was
2 articulated to you what the standard was that you
3 needed to look for for utilizing your canine in a
4 correctional setting?

5 A As I said before, combativeness,
6 assaultiveness, or the potential for combativeness or
7 assaultiveness.

8 Q Okay. And just really quick, Officer
9 McCowan, I meant to ask you. Did you speak with
10 anyone about your testimony during the break?

11 A No, sir.

12 Q Okay. Thank you. And as you described the
13 assaultiveness and combativeness, are those concepts
14 that you understand are part of the VDOC use of force
15 policy?

16 A As far as I know, yes, sir.

17 Q And you're aware of that because of the
18 training that you received from VDOC. Is that
19 correct?

20 A Can you repeat the question, sir? I
21 apologize.

22 Q Sure. You're aware of the fact that

1 assaultiveness and combativeness are part of the
2 standard of your use of force because of the training
3 that you received?

4 A As I recall, yes sir.

5 Q Okay. Have you ever reviewed the use of
6 force or canine policy on your own?

7 A Yes, sir.

8 Q Do you know when or do you recall when you
9 would have reviewed the use of force policy on your
10 own?

11 A I do not, sir.

12 Q Is that something that you -- do you
13 frequently review the use of force policy or is it
14 something that you've done before but you don't
15 routinely do?

16 A It's something that I do occasionally. Just
17 on occasion to make sure no --

18 Q When was --

19 A I apologize. Just to make sure there's been
20 no changes.

21 Q Understood. No, I apologize. I didn't mean
22 to jump in there. When was the last time that you

1 reviewed it?

2 A I can't -- I don't recall, sir.

3 Q Okay. Did you review it in preparation for
4 your deposition today?

5 A No, sir.

6 Q Okay. Did you review any policies in
7 preparation for your deposition today?

8 A No, sir.

9 Q Okay. So a couple of more questions about
10 the canine training program that you went through.
11 And first, I'll ask you about the 480-hour program and
12 then the 80-hour program.

13 So with respect to the 480-program, how were
14 you evaluated during that training for purposes of
15 understanding whether or not you were, you know,
16 completing the training appropriately?

17 A I apologize, sir. I'm not an instructor.
18 As far as that goes, I do not know as to how the
19 evaluation goes -- how the evaluations go. I
20 apologize.

21 Q Understood. Did you ever receive the
22 equivalent of a report card or an assessment that had

1 different components that you were being ranked on?

2 A As I recall, yes sir.

3 Q Okay. And those components that you were
4 being on ranked on, what do you recall that those
5 were?

6 A I do not -- I do not recall, sir, as far as
7 the specifics go. I knew --

8 Q Do you --

9 A I knew that the instructors made an -- I
10 know that the instructors make an evaluation once a
11 week. If you are meeting their standards, you stay in
12 school.

13 Q Got it. So it was a weekly evaluation that
14 your training officers performed to enable you to
15 continue on to the next week of school. Is that
16 correct?

17 A Yes.

18 Q And did you receive those weekly evaluations
19 during your training?

20 A Yes.

21 Q Did you read and review those evaluations
22 during your training?

1 A Yes. Yes.

2 Q Okay. And as you sit here today, do you
3 generally recall whether or not use of force was one
4 of the criteria upon which you were being evaluated?

5 A Yes.

6 Q Okay. What other criteria do you recall
7 that you were being evaluated on?

8 A Responsiveness, ability, intelligence.

9 Q Any others?

10 A Not that I recall, sir.

11 Q Okay. So I believe then that you've
12 testified that weekly you received an evaluation
13 during training that evaluated you on different
14 components. Those components were use of force,
15 responsiveness, ability, and intelligence. Is that
16 correct?

17 A Yeah.

18 Q Okay. Are there any other criteria that you
19 were evaluated on?

20 A Not that I can recall, sir.

21 Q Okay. And so can we walk through each of
22 those criteria as you understand them? Was the use of

1 force evaluation, was that an evaluation of your
2 determination as to when use of force was proper or
3 what was that evaluation regarding use of force?

4 A I don't believe I understand the question,
5 sir.

6 Q Sure. Let me break it down. So was the use
7 of force assessment an assessment of your
8 determination as to whether or not to use canine
9 force?

10 A Can you repeat it one more time?

11 Q Sure.

12 MR. JOHNSON: Madam Court Reporter,
13 could you read that back?

14 THE REPORTER: I could play it back for
15 you. Just a moment.

16 MR. JOHNSON: Thank you so much.

17 THE REPORTER: Sure.

18 (The reporter played the record as
19 requested.)

20 MR. JOHNSON: Madam Court Reporter,
21 it's okay. The audio is really faint on my end. I
22 can barely hear it.

1 THE REPORTER: Okay. Just a moment.

2 MR. JOHNSON: I don't know whether he
3 can hear that. I apologize. It's okay. I can re-
4 ask.

5 THE REPORTER: Okay.

6 MR. JOHNSON: It's okay. I apologize.

7 THE REPORTER: It's okay.

8 BY MR. JOHNSON:

9 Q Sorry about that, Officer McCowan. I didn't
10 realize it would be so faint. So the question I was
11 asking, I believe you testified that use of force was
12 one of the components that you were evaluated on
13 weekly as part of your training.

14 And my question is: Was that evaluation of
15 the appropriateness of your determination as to when
16 canine force was appropriate?

17 A Yes.

18 Q Okay. Did the use of force assessment look
19 at the force that was used by you or commanding of the
20 dog in a training scenario? Or did it only look at
21 the decision to use force? Does that make sense?

22 A Can you repeat it one more time, sir? I

1 apologize.

2 Q No problem. So what I'm getting here is:
3 Is the evaluation of you looking at your decision to
4 use force or how much force you used?

5 A Both.

6 Q Okay. So let's talk about how much force
7 you were trained to use. Can you please walk me
8 through your training on how much force to use after
9 you've made an assessment that force is proper?

10 A You only go -- you only use force up to the
11 point of gaining compliance. That's stop the -- stop
12 the fighting, and lay on the ground, have both hands
13 out. Then at that point in time, stop. You go no
14 further.

15 Q Okay. Are there any other considerations
16 that you're trained to consider to determine when to
17 stop using force? Other than gaining full compliance?

18 A In a training scenario, no. In real life,
19 it's not as black and white, I would say.

20 Q What do you mean by that?

21 A I would say that with canine, it's more of
22 whenever the threat ceases. Whenever the threat

1 ceases, use of force stops. If they're laying on the
2 ground -- if they're laying on the ground compliant,
3 as long as I can for the most part see their hands and
4 make sure there are no weapons involved, I will give
5 the verbal command to disengage to the canine.

6 Q Okay. So in your training, are there
7 separate modules for determining whether or not a
8 threat is continuing as compared to whether or not an
9 individual is exhibiting combative or assaultive
10 behavior, as you testified earlier?

11 A I don't recall if there was particular
12 modules as far as how they set it up. I -- I don't
13 recall, sir.

14 Q Understood. But it's your testimony today
15 that the use of force for a canine is a different
16 standard, as you just articulated. And that standard
17 is when the threat has ceased, that is when you are
18 trained to stop using force. Is that correct?

19 A Yes, sir.

20 Q Understood. And you're trained that that
21 threat that you seek to cease the threat means that
22 the individual does not have a weapon visible and is

1 on the ground. Is that correct?

2 A Yes, sir.

3 Q Are there other scenarios that you're
4 trained on that you could come across where you should
5 continue to use force?

6 A If there is a -- if there is a weapon
7 involved. If there are -- if -- if an inmate is
8 laying on the ground and being compliant with both --
9 if I can see both of his hands, I can't see a reason
10 as to why force would still be being utilized.

11 Q Okay. And is that because the inmate is on
12 the ground or would your response be the same if the
13 inmate was standing up?

14 A They need to be -- they have to be laying on
15 the ground at that point. If they were still
16 standing, I would consider them a threat.

17 Q Understood. And are you trained that an
18 inmate who is standing is necessarily, meaning always,
19 a threat regardless of how that inmate is presenting?

20 A Yes.

21 Q Understood. So it's your testimony here
22 today that, as part of a training, you are trained

1 that if an inmate is standing upright, regardless of
2 the gestures or anything else, that inmate presents a
3 threat to you. Is that correct?

4 A No, sir.

5 Q Okay. So what's incorrect about that
6 statement?

7 A No, sir. Just standing there not doing
8 anything, just standing there, is -- does -- as you or
9 I are just sitting here speaking, no, sir. That is
10 not a means to use force.

11 It doesn't meet the aggressive actions as I
12 said before of some sorts. Approaching somebody,
13 waving their hands around with a closed fist or open.
14 There's several factors that come into play when
15 deciding to use -- utilize force.

16 Q Understood. So it's not just the fact that
17 the individual is standing upright that is justifying
18 your use of force. It is other gestures that inmate's
19 taking in connection with standing up. Is that your
20 testimony?

21 A Yes.

22 Q Okay. When you're going through the 480-

1 hour training program, how many scenarios are you run
2 through where you are required to use force as
3 compared to scenarios you're run through where you're
4 required to restrain from using force?

5 A I'd say they were -- oftentimes, we are
6 trained to not utilize force. It's more often that we
7 utilize -- that we do not utilize force than we do
8 utilize force.

9 Q And are you referring to the training
10 context or are you referring to your experience in the
11 field?

12 A Training and field.

13 Q Okay. Speaking just about the training
14 component now, to the extent that we can, I believe
15 you said you were trained to -- it's about even? Is
16 that correct? Or --

17 A No, sir.

18 Q Okay. So could you --

19 A I would say 80/20 -- 85/15. 80 -- 85/15,
20 maybe more. Even 90/10. I apologize. Probably 90
21 percent of the time, we're trained -- it's always try
22 your best to avoid using force if at all possible.

1 Q Okay. So could we talk about that
2 particular training? So when you say you're trained
3 to avoid the use of force if at all possible, what are
4 you trained on as possible alternative avenues to the
5 use of force of your canine?

6 A There are many different possible -- use of
7 verbal and audible commands, warnings. The use of
8 chemical agents. After those are all -- after those
9 are all exhausted, then all the -- well, let's see if
10 there's anything else I'm missing. Verbal audible
11 warnings, OC -- or chemical agent, I apologize.

12 Q It's okay.

13 A Other than any physical -- what's the word
14 I'm looking for? Physical contact of the officers
15 that may very well be in the pod to attempt to get
16 inmates to comply with orders if they're, say,
17 fighting before canine responds.

18 Q Okay. And just to confirm. Are these
19 techniques that are taught to all corrections officers
20 to de-escalate a situation or are these techniques
21 that are taught specifically to canine handlers for
22 canine handlers to use specifically to de-escalate a

1 potential canine deployment?

2 A They're -- as far as the verbal audible
3 warnings, and the deployment of OC, or I'm sorry,
4 chemical agent, those are -- that -- those sort of
5 things are taught to all correctional officers.

6 Q Understood. Is there any de-escalation
7 tactics that are taught specifically to canine
8 handlers that canine handlers are supposed to employ
9 before utilizing their canine?

10 A No, sir.

11 Q Understood. Is it correct, then, that prior
12 to the use of force that either yourself or another
13 officer who you've been made aware of has done this,
14 must give a verbal command to stop fighting or to stop
15 engaging in whatever behavior is leading to the
16 response by the officer or yourself? Is that correct?

17 A Yes.

18 Q Okay. And is it your testimony, then, that
19 if an inmate does not comply with either an individual
20 verbal warning or multiple verbal warnings, that the
21 next level of de-escalation would be to deploy a
22 chemical agent to try to cease the engagement of the

1 behavior?

2 A Yes.

3 Q Understood. And then if the warnings and
4 the chemical agents fail, then it's your understanding
5 that at that point, if you're a canine officer, it is
6 proper to utilize force up until the point in which
7 you have ceased the continuing threat posed by the
8 individual. Is that correct?

9 A Yes.

10 Q Okay. And from a training perspective, when
11 you are making your assessment as a canine officer as
12 to whether or not the threat is continuing, do you
13 have a list of things that you're looking for or is a
14 totality of what you're seeing that leads you to
15 determine that a threat has ceased?

16 A The totality, sir.

17 Q Okay. And what are those circumstances in
18 totality that you're looking at and making decisions
19 about?

20 A With -- that verbal warnings have been given
21 by control room officers, and our officers that have
22 been in the pod. The chemical agent that has been --

1 already been utilized, by policy, only three times.
2 Once all those are exhausted, I have to make -- at
3 what point is it going to -- what -- at what point is
4 it going to stop? Whatever the situation.

5 Q Understood. And other than what you've
6 described already today, are there any criteria that
7 you're trained to look for to help you make an
8 assessment of when the threat has ceased?

9 A I don't believe I understand your question,
10 sir.

11 Q Other than what you've already testified to
12 today, are there any criteria that you learned in
13 training that you are supposed to apply when making an
14 assessment as to whether or not an individual is
15 continuing to pose a threat?

16 A I don't know, sir.

17 Q When you were being trained on these
18 criteria, were you verbally told what to look for or
19 were you given training materials that listed out, you
20 know, a number of things?

21 A It -- I would say a mixture of all those
22 things plus experience.

1 Q Okay. So maybe let's focus just on the
2 classroom component of it and then let's focus on the,
3 you know, experience training piece of it. So on the
4 classroom component, I believe you testified that you
5 received, like, actual, physical training materials
6 that included these kind of lists of things to look
7 for when determining whether or not a threat is
8 continuing. Is that right?

9 A I don't recall whether or not we were
10 actually given any particular information on it. I
11 know that there was a training book that they would
12 give you at the beginning of school. But I do not --
13 I don't remember whether or not there was anything of
14 that caliber in that training manual, sir.

15 Q Okay. After leaving school, have you ever
16 looked at that training book that you were provided?

17 A No, sir.

18 Q Okay. So in the, you know, the experiential
19 side of your training, so the non-classroom component,
20 would you be provided or given training scenarios that
21 required you to exercise judgment and an understanding
22 of the totality of circumstances that would lead you

1 to cease using force?

2 A Yes.

3 Q Can you describe those for me?

4 A What it is called is institutional
5 environment training.

6 Q Okay. Can you describe as much as you can
7 recall sitting here today about that training?

8 A You -- it's -- all you -- all it it really
9 is they'll run you through a number of different
10 situations where you have to make a decision on
11 whether or not to actually utilize force or whether or
12 not to -- when it's right and when it's wrong.

13 Q Okay. Do you recall the specific situations
14 that you had to make a determination on as you sit
15 here today?

16 A I -- there's dozens, sir.

17 Q Okay. Do you recall any of them?

18 A Are you speaking of those that were taught
19 in the original, 480-hour school?

20 Q Yes, sir. Yes.

21 A No, sir. I do not recall any of -- of
22 those. They're -- they're not much different than

1 those that we do today. But as far as the specific
2 goes, I can't speculate on that.

3 Q Okay. Do you recall in the 80-hour class
4 what the scenarios were?

5 A You know, no, sir.

6 Q Okay.

7 A Not to any specifics.

8 Q Okay. Do you recall as you sit here today
9 what the scenarios are that you train on today?

10 A Yes, sir.

11 Q Okay. Can you describe those for me?

12 A Fights, riots, staff assaults, anything that
13 could possibly go wrong inside an institution.

14 Q Okay. So what specifically are you trained
15 on for fights?

16 A Can you --

17 Q Sure. Let me take a step back. I believe
18 you said you're trained on "fights, and riots, and
19 anything that could happen in a correctional setting."
20 Is that correct?

21 A Yes, sir.

22 Q Okay. So what is your definition of a

1 fight? And what training do you receive to react to
2 that described scenario?

3 A Definition of a fight is a physical
4 altercation between two or more individuals.

5 Q Okay. Understood. And what's the training
6 that you received to respond to a physical altercation
7 between two or more individuals?

8 A It's -- well, the institutional environment
9 trainings. It's the situational training that we go
10 through during schools and during our in-services.

11 Q Okay. Can you specifically describe what
12 that training is?

13 A Yes, sir.

14 Q Okay.

15 A So what we will do as canine officers is
16 simulate a fight with equipment -- with safety
17 equipment, and the canine officer will respond to said
18 incident and decide whether or not force needs to be
19 utilized at that time.

20 Q Okay. Do you recall when the officer needs
21 to make a determination as to whether or not force
22 needs to be used, do you recall the specific scenarios

1 that you recreate with protection?

2 A Yes, sir. It's if you continue to be
3 combative, or assault other officers, or you begin to
4 approach other inmates in a threatening -- I
5 apologize. You begin to approach other inmates or
6 staff in a -- a -- what's the word I'm looking for? A
7 combative manner.

8 Q Okay. And I'm trying to paint a picture
9 here. So then is what you're saying you go through a
10 training class where you have a canine officer who is
11 roll-playing as a combative inmate. You have another
12 officer who is roll-playing as another combative
13 inmate, and those two officers in their role plays are
14 simulating a physical altercation.

15 And then you are then, as the canine
16 officer, required to show up and observe that
17 interaction and then you're evaluated based on your
18 performance. Is that what you're saying?

19 A Yes, sir. In a sense. Yes, sir.

20 Q Well, help me understand it. Could you
21 maybe describe it in your words as opposed to mine?

22 A It's pretty -- you've got it pretty close.

1 Yes, sir.

2 Q So what do I have wrong?

3 A Other than the show up, you respond to those
4 incidents when called.

5 Q Okay.

6 A And then once you respond to those
7 incidents, it's making decisions on whether or not
8 force must be used if they're continuing combative
9 behavior or not.

10 Q Okay. And during your training, are you
11 told to assume certain facts, you know, for example,
12 are you told to assume a certain fact when you are
13 first, you know, come into and arrive on the scene of
14 the simulated altercation?

15 A No, sir. You can't assume much of anything
16 in life.

17 Q Understood. Understood. Is the scenario
18 changed in any way as you're going through it? As
19 you're training?

20 A Yes. It can be. If the officers decide to
21 change it, they can. If there's -- it's role-playing.
22 It can go ten different ways.

1 Q Understood. And in your experience in the
2 field, is the simulated training that you receive
3 indicative of the interactions that you come across in
4 your patrol?

5 A A lot of the situations that these officers
6 simulate, they have seen in the past. So yes.

7 Q Understood. So the training that you
8 receive is based at least in part on actual incidents
9 within the VDOC correctional system?

10 A Yes.

11 Q Okay. Is your training exclusively based on
12 instances, as far as you're aware, prior incidents
13 within the VDOC system?

14 A Not all. No, sir.

15 Q Okay. So you're aware that at least some of
16 the instances are, for lack of a better word, made up?

17 A Yes, sir.

18 Q Okay. Understood. I believe you said
19 you're specifically trained on riot response. Is that
20 correct?

21 A Depending on the situation, but yes, sir.

22 Q Okay. Did you specifically go through riot

1 training?

2 A I have not yet to the point -- well, yes
3 I -- yes, sir. I have.

4 Q Okay.

5 A I apologize. Yes, sir. I have.

6 Q No problem. It's okay. When did you go
7 through riot training?

8 A During the 480-hour school.

9 Q Understood. And is that a training that you
10 go through by yourself or with the canine that you're
11 training with?

12 A Both myself and the canine that you're
13 training with.

14 Q Okay. So then would you have gone through
15 that training with Tessa?

16 A Yes.

17 Q Okay. And when you're going through the
18 riot training, is there a different use of force
19 standard that you are trained on in a riot setting as
20 compared to a fight setting?

21 A Yes.

22 Q Could you explain that to me?

1 A Strike force and TSU are also involved
2 during riots.

3 Q Okay. What was the acronym that you used at
4 the end there? I apologize. I'm not familiar with
5 it.

6 A Strike force and TSU, they are a
7 specifically trained group of corrections officers
8 that the VDOC employs to deal with very large groups
9 of inmates that are assaultive or combative that's in
10 one area -- one particular area, which is a riot -- a
11 prison riot.

12 That's when they -- if something happens,
13 say, a riot does happen, canine, TSU, and strike force
14 will work together to quell the incident.

15 Q Understood. Other than strike force, is the
16 unit -- did you say TSU?

17 A Yes. Yes, sir.

18 Q Okay. What does TSU mean?

19 A I actually do not know the acronym.

20 Q That's okay. But they're another unit
21 within the correctional system that is trained and
22 tasked with quelling certain types of conduct that

1 occurs in VDOC, including large prisoner activities?

2 A Yes.

3 Q Okay. As far as you're aware, does VDOC
4 policy define what a riot is?

5 A Yes, sir.

6 Q Okay. And what's your understanding of what
7 the definition of a riot is under VDOC policy?

8 A I do not know the specifics of what policy
9 says of the riot. I apologize.

10 Q That's okay. Do you have a general sense of
11 kind of what it is? I mean, for someone who is a --
12 well, you know, is it 50 inmates? Does that qualify
13 as a riot? Does it have to be a couple hundred?
14 What --

15 A It can be any large -- I don't know that
16 there is a particular number that they use.

17 Q Okay.

18 A Any -- I would say that any large group of
19 inmates that is being combative to staff and is
20 refusing to, let's say, come off the yard or beginning
21 to destroy the state property, anything of those --
22 something of that nature would be considered a riot, I

1 would say.

2 Q Understood. And how are you made aware that
3 a riot is occurring? Is there an individual tasked
4 with making the assessment that a riot is starting and
5 then communicating that to other officers?

6 A I'm not sure, sir.

7 Q Okay. So how are you trained during riot
8 training to know when you should be utilizing riot
9 training?

10 A It's -- personally, I have never been a part
11 of a riot. That's why I'm having trouble -- that's
12 why I'm having trouble with these questions. I've
13 never had to have been a part of a riot luckily.

14 Q Yeah.

15 A The -- I'll say that the -- who determines
16 whether or not it's a riot, if there's -- I can't say
17 that there is actually a particular person that
18 concludes that there is a riot going on. I think
19 it -- it's just a general assumption that that is what
20 is happening.

21 Q Understood. And just to confirm. I believe
22 you testified you have never actually experienced a

1 riot in your career at VDOC. Is that correct?

2 A Not in real life. No, sir.

3 Q Understood. Is -- well, let me take a step
4 back. So we've been talking primarily about, for the
5 last little bit here, about the 480-hour program that
6 you went through. With respect to the use of force
7 training and the scenarios that we just kind of spoke
8 about, are there differences between how you are run
9 through those scenarios in the 480-hour program
10 compared to the 80-hour certification you did with
11 Shadow?

12 A No, sir.

13 Q Okay. So is it your testimony that it's the
14 same training that you can -- excuse me. Let me start
15 over. Is it your testimony that the 80-hour training
16 is the same scenarios that you go through in the 480-
17 hour training?

18 A No, sir. It doesn't necessarily have to be
19 the exact same scenarios. The scenario changes on --
20 it -- they -- they just -- whatever -- whatever the
21 officer decides at that moment in time is what you'll
22 have to deal with.

1 Q Understood.

2 A And what you have to think -- make a
3 decision -- make an informed decision on what's going
4 on. What's -- well, what they are doing.

5 Q Understood. So it's your understanding that
6 the training officers make determinations during the
7 training as to the scenario that they're going to
8 present you as the trainee with. And then they make
9 an assessment as to your response to whatever
10 situation that they have presented to you?

11 A Yes.

12 Q Understood. And specifically as to your
13 training, I believe you testified -- well, let me take
14 a step back. Did you specifically have different
15 training scenarios in the 80-hour certification you
16 did with Shadow as compared to the 480-hour training
17 that you had with Tessa and Rojo?

18 A I apologize. Can you repeat that last part
19 with the question -- the -- the question, sir? Can
20 you repeat the question? I apologize.

21 Q Did you have the same training scenarios
22 with Shadow as you did with Tessa and Rojo?

1 A For the most part of the same. Yes.

2 Q Okay. And do you recall what's leading you
3 to say "for the most part"?

4 A The officers, I mean, as far as role-playing
5 goes, they're never particularly exactly the same.
6 Different officers act different ways or do different
7 things to make you think about what you're doing.

8 Q Understood.

9 A I would say the -- the incidents themselves
10 are pretty well the same. The actions of those
11 playing out those incidents are different.

12 Q Understood. So you may have a "fight"
13 scenario that two training officers play out in a
14 different way, but you would just refer to that as a
15 fight scenario training. Is that what you're saying?

16 A Yes. That's -- that is -- I -- that is
17 institutional environment training. Yes, sir.

18 Q Understood. Okay. Are you trained on
19 performance evaluation reports for canines?

20 A As officers, we do not -- we do not do the
21 evaluating. The instructors evaluate.

22 Q So when you -- okay. Understood. When you

1 are in the field and you are with Shadow, for example,
2 are you required to do performance evaluation reports
3 for Shadow?

4 A Yes. Actually, yeah. Yeah. Yes.

5 Q Okay. And what's the frequency by which you
6 are required to complete those performance evaluation
7 reports for Shadow?

8 A I don't know that I would actually call it
9 an evaluation report. It's something that we log on
10 DINGO. It's a utilization report. But -- but it --
11 it does include the evaluation of the dog -- of the
12 canine itself.

13 Q Okay.

14 A So but it's in a utilization report.

15 Q Okay.

16 A We don't actually do an evaluation report
17 itself. But then DINGO utilizations, there is a part
18 in that DINGO system that allows you to evaluate said
19 canine.

20 Q Okay. So I'm going to ask you a couple of
21 questions about that. But just to put the foundation
22 down, what is DINGO?

1 A DINGO is a computer system that the VDOC
2 employs to track canine utilizations, engagements,
3 veterinary visits, medical records. I believe that's
4 it.

5 Q Okay. Has DINGO been in use since you've
6 been a VDOC employee?

7 A I don't know, sir.

8 Q Okay.

9 A It has been employed -- DINGO has been
10 employed since I have been a canine handler. Before
11 that, I could not say.

12 Q Understood. But ever since you've been
13 trained as a canine handler, DINGO has been the system
14 of record that you use to keep records on Shadow or
15 your --

16 MR. DAVIS: I'm going to object to the
17 form of the question. You can go ahead and answer.

18 THE WITNESS: Yes. Yes. We also keep
19 paper copies as well, though. Because as computer
20 systems go, a lot of times computer systems shut down,
21 and we lose everything. So a lot of times, we will
22 keep paper copies as long as -- as well as the digital

1 copy.

2 BY MR. JOHNSON:

3 Q Okay. Are you trained to use DINGO or are
4 you trained to use paper copies?

5 A Both.

6 Q Okay. So your training is to make a record
7 both in Dingo and then also have physical records as
8 well?

9 A Yes.

10 Q Understood. I believe you testified that
11 part of the evaluation that you do is of Shadow. Is
12 that correct?

13 A Can you repeat the question, sir? I
14 apologize?

15 Q Oh, of course. I believe you testified that
16 as part of entering information into the DINGO system,
17 and the utilization report I believe is the term that
18 you used, part of that is an evaluation of the canine
19 itself?

20 A A very small -- yes. A very small part,
21 yes, sir.

22 Q Okay. And are you trained on how to

1 complete that part of DINGO?

2 A By "evaluation," do you mean health
3 evaluation or performance evaluation, or --

4 Q Well, let me take a step back. What is it
5 that you are doing when you are entering in the
6 evaluation of the dog that you were just describing in
7 DINGO? What is it that you are making an assessment
8 or an evaluation of?

9 A Health.

10 Q Is it --

11 A On our side of it as officers, as canine
12 handlers, we are evaluating health of the canine.

13 Q Okay. And what goes into your assessment of
14 the health of the canine?

15 A As far as DINGO goes?

16 Q Yes.

17 A That they are in working condition.

18 Q Okay. What does "working condition" mean?

19 A That they are showing no lameness. That
20 they are not physically showing any sign of pain.

21 Q Okay. As part of your training, are you
22 trained to examine and identify when a dog is feeling

1 lame, or physical pain, or any of the other items
2 you're required to make an assessment on?

3 A Yes. And experience helps as well.

4 Q Okay. But my question is a little bit more
5 specific. Are you trained on how to make those
6 assessments?

7 A Yes.

8 Q Okay. What is the training that you receive
9 and when did you receive it?

10 A During the 480-hour school and as far as
11 what you trained on, just look for limping, anything
12 that you see that -- scratches, lesions, anything that
13 could prevent the canine from working.

14 Q Understood. Are there any other criteria
15 that you're trained to look for?

16 A As far as canine health goes, no.

17 Q I believe that you testified just a little
18 bit ago that you are required to retain a physical
19 copy of your records as well as entering information
20 into the DINGO system. Is that correct?

21 A It's just a safety protocol more or less
22 than it is anything in case we lose anything off the

1 DINGO because it had deleted some stuff in the past.

2 Q Understood. So I'm going to ask you about
3 that in a moment. I believe you just testified to
4 this. But there is no difference, then, between the
5 records that are kept in DINGO and the records that
6 you physically keep. Is that correct?

7 A The form that DINGO prints out does appear
8 different. But as far as what is entered into it, the
9 information is the same.

10 Q Understood. So just the, you know, eventual
11 output of the same, but the underlying data is
12 identical?

13 A Yes.

14 Q Okay. What did you mean when you said,
15 "Dingo has deleted things before"?

16 A Crashes. You'd lose certain particular --
17 you lose utilization, you lose bite reports. That's
18 why we keep paper copies.

19 Q Okay. And is it your testimony that you are
20 aware that DINGO has, in fact, in the past crashed
21 that resulted in a loss of data? Is that correct?

22 A I know it happened once, but I cannot recall

1 when.

2 Q Do you recall if that happened while you
3 were a canine officer?

4 A I had -- I don't recall, sir. I know that
5 it's happened once that I -- that I know of at some
6 point in time because I think I lost a few things.
7 Luckily, I did have paper copies of those.

8 Q Well, if you lost records, you would've
9 necessarily had to have been a canine officer. Is
10 that correct?

11 A Yeah. I -- yeah. I believe I was. I
12 apologize.

13 Q That's okay. So then the incident we're
14 talking about now where the DINGO system lost data
15 would have been sometime between January 1st of 2018
16 and today. Is that correct?

17 A Yes, sir.

18 Q Okay. When you say you believe you lost a
19 few reports, can you explain that in more detail
20 around what you mean by "lost"?

21 A Just lost them digitally, sir. They were
22 deleted from the mainframe.

1 Q Understood. So when you used the word
2 "lost," what you're referring to is the data record
3 that was in the system was completely erased and
4 unrecoverable?

5 A Digitally. Yeah.

6 Q Understood. And you believe that happened
7 to -- you're aware that that happened to a number of
8 your records. Is that correct?

9 A Yes. A few. I didn't lost a lot, but I
10 lost -- I had a few things got deleted that I was able
11 to recover from paper copies.

12 Q Understood. Are you aware of other officers
13 having their information deleted as well?

14 A I don't know, sir.

15 Q So you're not aware of any other employee at
16 VDOC who, at the time that you lost records, lost
17 their DINGO records?

18 A No. I don't know, sir. I apologize.

19 Q Okay. What did you do -- strike that. What
20 did VDOC require you to do after your records in DINGO
21 were deleted?

22 A We were -- had physical copies. So it was

1 not -- it was not an issue.

2 Q Was the data recreated in DINGO or did you -
3 - let me just stop there. Was the data recreated in
4 DINGO from the hardcopy records that you had?

5 MR. DAVIS: Objection. Calls for
6 speculation.

7 THE WITNESS: I don't recall sir. I
8 don't recall whether or not they had us -- I believe
9 we just kept the paper copies. We just kept the hard
10 copies instead of -- because we were at that point was
11 unsure of whether or not it would save them -- that
12 DINGO would save them to begin with because, at that
13 point in time, they would have been working on it.
14 The DOC was.

15 So I don't think those few documents
16 that we lost were entered into DINGO. Since we had
17 paper copies at that point, there was no need.

18 BY MR. JOHNSON:

19 Q Okay. So it's your understanding that your
20 reports, once they were deleted from DINGO, were never
21 recreated in DINGO. Is that correct?

22 A Yes, sir.

1 Q Okay. The reports that you lost that you're
2 speaking about right now in DINGO, have you gone back
3 to try to find them?

4 A In DINGO or --

5 Q Yes, sir. In DINGO.

6 A No, sir. They -- they are not existent in
7 DINGO. And they weren't incident reports. They were
8 90 -- I would say all of them were utilization reports
9 from just working inside the institution. So it's not
10 necessarily something that I had responded to in the
11 past. It was utilizations from working inside.

12 Q Understood. But as you sit here today, you
13 know for a fact that those utilization reports are
14 still unavailable in DINGO. Is that correct?

15 A I don't know that. I don't know, sir.
16 It's -- that was several years ago. They may have
17 found the -- system manager or someone down the line
18 may have found them and repopulated them into DINGO.
19 That I do not know.

20 Q Understood. But as you sit here today, you
21 have no understanding as to what happened to the
22 record -- the utilization reports of yours that were

1 deleted in the DINGO system. Is that correct?

2 A No, sir.

3 Q As part of either the -- well, let me break
4 it down. Sorry. As part of your 480-hour training,
5 are you trained on how to write an incident report?

6 A Yes.

7 Q Can you talk to me about the training you
8 receive on how to write an incident report?

9 A What we done at that point in time was we
10 performed a mock incident and then wrote a mock
11 incident report reflecting the mock incident from
12 memory as best you could.

13 Q Okay. And were you trained on the process?
14 Was part of your training on the process of submitting
15 an incident report?

16 A No, sir. As far as submittal goes, at that
17 point in time all we did was write the incident report
18 and were evaluated on said incident report.

19 Q Okay. And what are you evaluated on?

20 A The overall accuracy.

21 Q Okay. How are you evaluated on the overall
22 accuracy?

1 A Overall accuracy of the how -- does it --
2 does the incident report match what we're seeing
3 happen as far as the incident itself goes.

4 Q Okay. Are there specific modes or ways of
5 writing that you are trained to write an incident
6 report?

7 A No, sir.

8 Q Okay. Are you given any instruction on
9 preferred ways to describe or document an incident?

10 A As long as it professionally written and
11 that it is grammatically -- everything is
12 grammatically correct within that incident report,
13 that's the only specifics that you really need.

14 Q Okay. Are you trained on what a
15 professional report means or looks like? Or is that
16 left up to, kind of, your judgment?

17 A It's your judgment.

18 Q And what are you trained on in terms of
19 after you submit your -- let me strike that. Sorry.
20 Let me start over. What is your understanding of once
21 you have submitted your report, the ability for that
22 report to be changed?

1 A The only -- once the report is submitted, it
2 can -- it can be changed. But once it is -- once the
3 report itself has been approved by a supervisor, then
4 it cannot be changed.

5 If you do a report, you send it to the
6 supervisor, that supervisor sees a grammatical error
7 or something along those lines, he will then send it
8 back to you to fix. And once it's approved, it cannot
9 be -- once it's approved by the supervisor, it cannot
10 be -- what's the word I'm looking for? It cannot be
11 changed after that.

12 Q Okay. Do you sign your incident reports
13 before you send them to your supervisor for review?

14 A No.

15 Q Okay.

16 A They're --

17 Q So -- please go ahead. I apologize. I'm
18 sorry.

19 A It's okay. There is not a -- all the
20 incident reports themselves are done on a system
21 called CORIS. It's a computer system, so there's
22 no -- it's more of an e-signature than it is -- you

1 don't physically sign those papers.

2 Q Understood. But you are trained and
3 instructed that you are not to sign off on an incident
4 report until your supervisor has reviewed it. Is that
5 correct?

6 A Yes. There are -- when you -- when you
7 submit the incident report, it is technically already
8 signed by you -- e-signed. I would say e-signed.
9 If -- as long as the supervisor sees that there's not
10 anything particularly wrong with that incident or with
11 that incident report, then it is approved.

12 Q Understood. So just to clarify, you
13 complete an incident report, and you e-sign it. And
14 then it gets submitted to your supervisor who then
15 performs another level of review. And if that
16 supervisor has changes to make, they can send it back
17 to you as the officer to have those changes made prior
18 to the report being finalized. Is that correct?

19 A Yes.

20 Q Understood. Do you have an awareness, other
21 than grammatical issues or spelling issues, of the
22 criteria that a supervisor uses to review an incident

1 report from a canine officer?

2 A I do not know, sir. I am not or ever have
3 been a supervisor, sir.

4 Q Understood. Have you ever had any
5 conversations with any of your fellow canine officers
6 about what your supervisors look for in your incident
7 reports?

8 A No, sir.

9 Q Have you ever had a supervisor review your
10 report and request changes?

11 A Yes.

12 Q How frequently does your supervisor ask you
13 to make a change in one of your incident reports?

14 A Not often.

15 Q Okay. Do you recall each specific time that
16 it's happened to you in your career at VDOC?

17 A No, sir.

18 Q Okay. Do you think it's happened to you ten
19 times?

20 A No, sir.

21 Q Do you think it's happened five times?

22 A Between five and seven, I would say. Yes,

1 sir.

2 Q Understood. And when you have had a
3 supervisor send back a report to you, what do you
4 understand caused the supervisor to send the report
5 back to you?

6 A As I said before, grammatical errors.
7 Misspelled words, commas, periods, just something that
8 is missing or the overall flow of the report to make
9 it easier to read.

10 Q What do you mean by "overall flow of the
11 report to make it easier to read"?

12 A As far as -- as far as grammatical errors if
13 you have commas or periods in different positions or
14 if you have run-on sentences, something along those
15 lines. That's about the only thing that are -- that
16 they -- each -- that is changed.

17 Q Understood. In your experience, have you
18 ever had a supervisor reorder or reorganize and
19 incident report that you wrote?

20 A No, sir.

21 Q Have you ever had a supervisor change any of
22 the words that you used to describe an incident?

1 A No, sir.

2 Q Have you ever had a supervisor make changes
3 to your report that you disagreed with?

4 A That I don't recall. I don't -- no, sir.
5 No, sir.

6 Q Okay. So every time that a supervisor has
7 sent you a report and asked you to make changes,
8 you've agreed with the changes that a supervisor has
9 asked you to make?

10 A Yes, sir. Are we speaking directly of while
11 I was in canine or when I was -- I was an officer?

12 Q Ever.

13 A Ever? I think I only ever had an issue once
14 that I can recall, and I don't -- I can't remember the
15 specifics of it, sir.

16 Q Okay. And did --

17 A It was while I was canine. It was during my
18 time as canine.

19 Q It was during your time as canine?

20 A Yes. I -- I apologize. It -- I recall one
21 instance where I had a lieutenant actually, a
22 lieutenant changed some words around in my report that

1 I did not agree with. We come to an agreement that it
2 needed to stay the way it was, and it was -- there was
3 nothing as far as out of the way. It still wasn't
4 particularly, completely, and totally changed. It was
5 just not my words.

6 Q Understood. Was that Lieutenant Woods?

7 A Lieutenant Woods?

8 Q Yes.

9 A Yes, sir.

10 Q What do you recall about the words that you
11 wanted to use versus the words that Lieutenant Woods
12 wanted to use?

13 A I can't recall the particular incident as
14 far as the specifics go, sir.

15 Q Okay. Do you recall the underlying incident
16 that gave rise to you having to document an incident
17 report?

18 A I believe there was a group. As I recall
19 it, there was a group of about 10 to 15 inmates that
20 were refusing to return to their housing assignment.
21 And the officer that was in that pod at that
22 particular time asked for canine assistance as I

1 recall. The best that -- the best I recall.

2 Q Okay. Did Lieutenant Woods have a
3 different, as you sit here today and as you recall
4 today, do you recall having an understanding or
5 thinking that Lieutenant Woods had a different view of
6 this situation than you did?

7 A I don't know, sir.

8 Q Okay. Do you recall Lieutenant Woods's
9 changes to your report as being accurate of the event?

10 A I can't recall, sir, the specifics.

11 Q Understood. Just one more question. Do you
12 recall why it was that you felt the need to disagree
13 with Lieutenant Woods and how he wanted to
14 characterize the event?

15 A As I said before, sir, I can't recall the
16 specifics of what the particular issue was.

17 Q Understood.

18 A That myself and Lieutenant Woods had at that
19 point in time.

20 Q Understood. Do you still work with
21 Lieutenant Woods?

22 A I believe he is still employed through the

1 DOC -- through the -- through the Virginia Department
2 of Corrections, but I -- I do not directly work with
3 Lieutenant Woods. No, sir.

4 Q Okay. Was he your supervisor at the time
5 you had a disagreement about your incident report?

6 A My direct supervisor, no. He was at that
7 point the shift commander of, as I recall it, A-Break
8 nights.

9 Q Okay. And the incident that we're talking
10 about here, did that occur at Red Onion?

11 A Yes.

12 Q Okay. And other than Lieutenant Woods, have
13 you ever disagreed with a supervisor who was asking
14 you to make a change to your incident report?

15 A No, sir.

16 Q Okay. Are you familiar with Mr. Corey
17 Johnson?

18 A Yes, sir.

19 Q How are you familiar with him?

20 A An incident that he was -- he and I was
21 involved in in May of 2020.

22 Q Okay.

1 MR. JOHNSON: Tim, I was just going to
2 jump in here really quick. Now may be a good time to
3 take, maybe, a five-minute break as we might jump into
4 kind of a longer segment.

5 So I'm happy to kind of keep going or
6 if folks maybe want five minutes or five to ten
7 minutes to take a quick break and then we can jump in.
8 My hope is that maybe -- actually, could we go off the
9 record, Madam Court Reporter?

10 THE REPORTER: Sure. We're off the
11 record at 11:59 a.m.

12 (Off the record.)

13 THE REPORTER: Okay. We're back on the
14 record at 1:00 p.m. Go ahead.

15 BY MR. JOHNSON:

16 Q All right. Officer McCowan, during our
17 lunch break that we just came back from, did you have
18 any conversations with anyone about your testimony
19 here today?

20 A No.

21 Q Okay. So I believe you said when we
22 started, you had exhibit share loaded on a screen in

1 front of you. Is that still the case?

2 A I do.

3 Q Okay. Great. I'd like to run through a few
4 documents with you. And so just bear with me for just
5 a moment, please, as I have to transfer it out of a
6 private file into the public one. So I'm going to do
7 that right now.

8 MR. JOHNSON: One moment. Okay. So
9 Officer McCowan, I am about to show you what's been
10 pre-marked as Defense Exhibit 1. And give me one
11 moment. It should now be populated in your marked
12 exhibits folder as Defense Exhibit 1, and it should be
13 a PDF.

14 (Defense Exhibit 1 was marked for
15 identification.)

16 BY MR. JOHNSON:

17 Q Please let me know when you have accessed
18 the PDF that's marked as Defense Exhibit 1.

19 A It is open. Yes.

20 Q Okay. Great. Have you ever seen what's
21 been pre-marked as Defense Exhibit 1 before?

22 A I have. This is a training transcript.

1 Q And what is it a training transcript of?

2 A All the training that you've received
3 through the years of employment.

4 Q Okay. And is this particular training your,
5 Officer Brian McCowan's, training record?

6 A It appears to be. Yes.

7 Q Okay. Do you want to take a quick look
8 through the document to just confirm that this is in
9 fact your training record?

10 A This is mine.

11 Q Okay. Are there any trainings that you have
12 taken as a VDOC employee that are not listed here?
13 And please take your time to review.

14 A No, sir.

15 Q Thank you. Now, I believe earlier this
16 morning or earlier today, excuse me, we spoke about a
17 480-hour training class program that you participated
18 in. And I believe that we also mentioned and spoke
19 about an 80-hour recertification program.

20 Is that correct?

21 A Yes.

22 Q Could you please first point me to the

1 trainings that are on Defense Exhibit 1 that occurred
2 at the 480-Hour training? If any.

3 A Does this Exhibit 1, does this include all
4 of the pages listed or is it just the first page that
5 I'm seeing listed?

6 Q I believe it's all pages. There should
7 be --

8 A All the pages. It might take me a moment to
9 find it, then.

10 Q Yes, sir. I believe the exhibit should have
11 13 PDF pages. I just want to confirm, does your
12 exhibit begin with -- in the bottom right-hand corner
13 there's what we refer to as a Bates Number that starts
14 with "Johnson" and then it says "582" and then it says
15 "000055." Do you see that?

16 A Johnson 582 -- yes. I do see that.

17 Q Okay.

18 A It's almost hidden by these --

19 Q By the sticker. Yes, sir. Is the last page
20 of the PDF in your exhibit Johnson 582 000067?

21 A Yes.

22 Q Understood. So if you could please review

1 each of the pages and let me know which of the
2 trainings occurred at the 480-hour training.

3 A I'm actually not seeing -- seeing it on any
4 of these pages.

5 Q Understood.

6 A Let me go back through it one more time and
7 make sure I didn't miss it.

8 Q Okay.

9 A It should be on here somewhere. I do not
10 see it on here, sir. I'm not sure why it's not
11 because it is an academy -- all training has to go
12 through the academy, so it should be on here. But
13 it -- but it isn't. I'm not sure why.

14 Q Understood. And in your review of what's
15 been marked as Defense Exhibit 1, did you see listing
16 any of the courses that you took when you performed
17 the 80-hour certification with Shadow?

18 A I found neither. I will run through it once
19 again.

20 Q Thank you.

21 A And make 100 percent sure.

22 Q Thank you.

1 A As far as I can tell, it is not on the
2 transcript.

3 Q Do you see on what's been -- excuse me. On
4 what's been marked as Defense Exhibit 1, do you see
5 any trainings pertaining to canine or canine handling?

6 A No.

7 Q Okay. All right. And then just one last
8 question before I move away from this document. Other
9 than the training courses that you underwent as part
10 of becoming a canine handler and your continuing
11 education as a canine handler, are there any other
12 trainings that you have received from VDOC that are
13 not listed in this document?

14 A Not that I am aware of, sir.

15 Q Understood.

16 A I was unaware that the training with the
17 canines was not on here. That actually surprises me.

18 Q Understood. Why does that surprise you?

19 A It's all logged on this action or -- or this
20 form.

21 Q As you sit here --

22 A I'm not -- I'm not 100 percent sure why it's

1 not here.

2 Q Understood. I was just going to ask. I
3 apologize for jumping in before you were finished
4 there. I apologize.

5 So as you sit here today, do you have any
6 understanding as to why none of your canine training
7 is reflected in your training records?

8 A No, sir.

9 Q You would agree with me that that's what
10 this document reflects?

11 A It does reflect all training that has been
12 done -- received for the most part. Since it -- the
13 earliest date I found is since 2014.

14 Q Understood. Okay.

15 A That's unusual.

16 Q Okay. So I apologize for the -- one sec.
17 Sorry. Just give me a second here. I am now going to
18 show you what's been pre-marked as Defense Exhibit 2.
19 Please let me know once you have opened what's been
20 marked as Defense Exhibit 2.

21 (Defense Exhibit 2 was marked for
22 identification.)

1 A All right.

2 Q It's a bigger PDF, so it is still
3 transmitting on my end, and it may take a moment to
4 download on your end. Okay. I believe what's been
5 pre-marked Defense Exhibit 2 should now be in exhibit
6 share.

7 A I have not received it yet.

8 Q Okay.

9 A There it is.

10 Q Wonderful. If you could go ahead and open
11 that and let me know once you've opened it. You may
12 need to change the layout. I had to -- I had to flip
13 the view, and there's an icon in the bottom. If you
14 hover on the bottom of PDF, it says "Rotate all
15 pages." And if you click that icon a couple times, it
16 will rotate the document so that it's in the portrait
17 mode.

18 A Yes, sir. I've got it straightened out.

19 Q Understood. Thank you so much. Okay. So
20 do you now have in front of you what's been pre-marked
21 as Defense Exhibit 2?

22 A Yes.

1 Q Okay. And to confirm, even though the stamp
2 on this document is in the top right, do you see a
3 similar Bates stamp to what we discussed on the last
4 document? Whereas this one starts with Johnson 582
5 000522?

6 A Yes, sir.

7 Q Okay. Thank you. Have you ever seen what's
8 been pre-marked as Defense Exhibit 2 before?

9 A I have -- I have seen one of these before,
10 but this is an instructor's form not commonly -- not
11 used by a basic patrol handler.

12 Q Understood. So this is not a form that you
13 complete?

14 A No.

15 Q Okay. What is your understanding of when a
16 supervisor completes this form?

17 A I really don't have any understanding on it
18 other than what we're certifying on, the performance
19 measures.

20 Q Okay. So --

21 A As far as the actual layout and things to
22 speculate on on this form, I really couldn't say.

1 Q Okay. Understood. So I'd like to point
2 your attention to the first column in the top left
3 about four lines down, it starts with "Class/Subject:
4 Quarterly Evaluations." Do you see that?

5 A Is this on the first page?

6 Q Yeah.

7 A "Class/Subject: Quarterly Evaluations."
8 Okay. Yes, sir. I have -- I -- yes, sir.

9 Q Okay. Is this the quarterly evaluation you
10 spoke about earlier that I believe you testified that
11 you complete as part of DINGO and as part of your
12 evaluation or is this a different quarterly
13 evaluation?

14 A A quarterly is an evaluation of you and the
15 dog that you do every -- you and the canine that you
16 do every three months.

17 Q Understood. So this evaluation report is
18 completed by your supervisor quarterly that evaluates
19 both you and your canine?

20 A Yes.

21 Q And this is not a report that you complete
22 in DINGO? That is a separate function different from

1 this?

2 A This is a supervisor "slash" --

3 Q Okay. And where it says about two columns
4 over from the "Class/Subject" line we were just
5 looking at, two lines up from there it says, "Handler
6 Name: McCowan, Brian." Do you see that?

7 A Yes, sir.

8 Q And do you understand that to be yourself?

9 A Yes.

10 Q And under "Evaluator," it says, "Jimmy
11 Stanley." Do you see that?

12 A Yes, sir.

13 Q Okay. And do you understand, is Jimmy
14 Stanley, was he or she your evaluator at the time?

15 A Yes, sir.

16 Q Okay. Under "Canine Evaluation," under
17 "Objective," do you see where it says "Controlled
18 aggression"?

19 A Under "Objective," yes. "Controlled
20 Aggression." That's what it says.

21 Q Okay. And then do you see to the right of
22 where it says "Controlled Aggression," there are a

1 number of measures listed that called "Performance
2 Measures"?

3 A Yes.

4 Q Are you familiar in any context with these
5 performance measures?

6 A In usage, yes. In -- as far as explanation
7 to verbatim, no sir.

8 Q Okay. How are you familiar with them in
9 usage?

10 A In training. During training, we use these
11 forms of controlled aggression to certify with.

12 Q Okay. Are these performance measures the
13 same measures that you and I were generally discussing
14 that you are evaluated on when you're going through
15 your canine -- either the 480-hour canine training or
16 the 80-hour canine training?

17 A Yes.

18 Q Are these the exact same criteria that
19 you're judged on?

20 A Yes.

21 Q Is the criteria and manner in which you're
22 evaluated on the performance evaluation report

1 identical to the criteria and manner in which you're
2 evaluated during training?

3 A Yes.

4 Q Understood. Just a few more questions.
5 Going back to the very, very top of the page above
6 where it says "Quarterly evaluations," do you see
7 where it says "K9 Name: Shadow"?

8 A Yes.

9 Q And you understand that to be the canine
10 that was assigned to you from 2019 through 2021?

11 A 2022. And yes.

12 Q Okay. Yes. Okay. Excuse me, yes. You're
13 right. Sorry. Through January of 2022. Yes. I
14 apologize.

15 And under "K9 Location," do you see where it
16 says, "Red Onion State Prison"?

17 A Yes.

18 Q And you understand that's the same Red Onion
19 State Prison that is the location of where, when you
20 were describing your familiarity with Mr. Corey
21 Johnson, that that's the same facility?

22 A Yes.

1 Q Okay. Do you have any understanding of over
2 on the right under "Evaluator," where it says, "Jimmy
3 Stanley," it says, "Total Time Used: 3 hours 0
4 minutes"?

5 A I do not.

6 Q Okay. In your experience handling Shadow,
7 did you and Shadow ever fail a quarterly performance
8 evaluation report?

9 A No.

10 Q And when we were speaking about your former
11 canine, Tessa, is the performance evaluation report
12 that Tessa failed after biting you this performance
13 evaluation report?

14 A Yes. I believe so. As I've said before,
15 I'm not an instructor. There may -- there may very
16 well be another one, but I am not aware of it.

17 Q Understood. But as you sit here today, your
18 understanding is that Tessa would have been evaluated
19 on a performance evaluation report similar to the one
20 that's been marked as Defense Exhibit 2. And as a
21 result of that process is why she was unassigned from
22 you. Is that correct?

1 A Yes.

2 Q Okay. I think we can close this document.
3 Thank you, Officer McCowan.

4 Okay, Officer McCowan. I'm going to show
5 you what's been pre-marked as Defense Exhibit 3. Let
6 me know when you have Defense Exhibit 3 in front of
7 you. It should be in the exhibit share now.

8 (Defense Exhibit 3 was marked for
9 identification.)

10 A I have it.

11 Q You got it? Great. Have you ever seen
12 what's been pre-marked as Defense Exhibit 3 before?

13 A Yes.

14 Q What is it?

15 A This is a training form that we used to
16 record training times that we would personally -- that
17 we would -- I'm sorry. We would log training on these
18 forms to keep as well as, I believe at that point,
19 they were logging it.

20 We would not -- we were not at point in time
21 were not personally logging training into DINGO. We
22 were doing these.

1 Q Understood. So is what's been marked
2 Defense Exhibit 3 an example of a hard copy record
3 that you were required to keep that you were also
4 required to enter into DINGO?

5 A Yes.

6 Q Okay. Do you see how this document also has
7 a Bates number in the top right-hand corner that
8 starts with Johnson 582 000470?

9 A Yes.

10 Q Okay. If you could please scroll to, I
11 believe it's going to be PDF Page 5. But for
12 identification purposes, the Bates number on the page
13 is Johnson 582 000474.

14 A Yes, sir.

15 Q And have you navigated to that -- that page?

16 A Yes, sir.

17 Q Okay. Do you see on the page it says,
18 "Month/Year: May 2020"?

19 A Yes.

20 Q Okay. And do you see it says "Handler: K9
21 B. McCowan"?

22 A Yes.

1 Q Okay. And do you understand that to be
2 yourself?

3 A Yes.

4 Q And do you see off to the left, it says
5 "Canine Name: Shadow"?

6 A Yes.

7 Q And do you understand that to be your
8 assigned canine as of May 2020, Shadow?

9 A Yes.

10 Q Okay. Do you see at the bottom of the PDF
11 about two lines from the bottom, there is a line that
12 says, under "Monthly Totals," "Total Number of Uses of
13 Force for the Month"? Do you see that?

14 A Yes, sir.

15 Q And do you see a one listed next to it?

16 A Yes, sir.

17 Q Do you recall what that was? That one
18 incident?

19 A That was Mr. Johnson, sir.

20 Q Okay. And do you see right above it, it
21 says, "Total Number of Responses for the Month: 3"?

22 A Yes, sir.

1 Q Can you explain to me, do you have a memory
2 of what those responses were?

3 A No, sir.

4 Q Do responses represent instances where you
5 are called to arrive or respond to an event where you
6 determined use of force was not required?

7 A Yes.

8 Q Is there any other incidents that can happen
9 that will be reported as a response as compared to a
10 use of force?

11 A Anytime we are called, it is considered a
12 response.

13 Q Okay. What is a utilization?

14 A Utilizations are a -- a utilization -- let's
15 see. How am I going to explain this? Utilizations
16 are a way of keeping track of the time that you are
17 using -- that you are utilizing the dog or the canine
18 inside of an institution.

19 So you see on May the 1st, if you'll come
20 down to "Number of daily Utilizations," you'll see I
21 have three of those. So that tells me that that day,
22 I had a total of three utilizations.

1 Whether it was a -- monitoring movements
2 from, let's say, 6:00 a.m. to 12:00 p.m., then I would
3 go on lunch from 12:00 to 1:00, I would then have
4 another utilization from 1:00 to 5:00 and then we
5 would wait. At count time, which is at 5:00 p.m.,
6 that normally clears -- count clear is normally about
7 6:00.

8 Night shift will then start -- night shift
9 will then begin to pull night recreation there, and
10 then that is another utilization 'cause we monitor
11 that recreation. So each utilization is a way of
12 explaining what we are doing when we are doing it.

13 Q Understood. Is there a difference between
14 utilization and patrol? Let me ask that in a
15 different way.

16 It sounds like to me, and in a more layman
17 term, a utilization is anytime you are using the dog
18 outside of the kennel. Is that true?

19 A Inside of an institution.

20 Q Yeah. So while Shadow was at Red Onion,
21 unless Shadow was quite literally in the kennel, every
22 time you took Shadow out, that would qualify as a

1 utilization. Is that correct?

2 A Yes. By utilization, you are --
3 utilizations include that you patrol and monitor
4 offender movement. That is -- the patrol part of it
5 is -- I would explain it as a subsection to -- to a
6 utilization.

7 Q Okay. So there's other ways that you can
8 utilize and report a utilization other than going on
9 patrol?

10 A Yes. Yes.

11 Q Okay. Could you explain those other ways
12 that you could utilize without going on patrol?

13 A If you were, say, called out -- outside of
14 the institution. If there was an escape, I'd say that
15 would -- that would probably be determined as a
16 utilization. But you're still technically on patrol.

17 Q Understood. Okay. If you were going to
18 report -- well, for example let's take Mr. Johnson's
19 incident. If the only incident you responded to in
20 the month of May was to the incident with Mr. Johnson,
21 would you have reported one utilization and one use of
22 force?

1 A I would have reported one response with one
2 use of force. And those utilizations, we don't
3 necessarily have -- the utilization does not
4 necessarily mean that we responded to an incident.
5 It's that -- that we were inside the institution at
6 that time.

7 Q I understand. So if you were just out on
8 patrol, you would mark a utilization. But if you
9 weren't on patrol and then you got called in to
10 respond, you wouldn't necessarily mark a utilization
11 for when you were called in if you weren't already out
12 on patrol?

13 A No, sir. If you were called in from being
14 off, that would be a utilization because you are going
15 from off-duty to on patrol.

16 Q Understood. So there is no instance where
17 you would have a use of force or a response but not a
18 utilization?

19 A No, sir.

20 Q Understood. But you could have the inverse
21 where you could have a utilization without a response
22 or a use of force?

1 A Yes.

2 Q Okay. Thank you. All right. I'm going to
3 ask that we keep this document up, but I'm going to
4 introduce another document as well and then we're
5 going to look at them together. So give me just one
6 moment to do that.

7 Okay. So Officer McCowan, I have put into
8 the exhibit share what's been pre-marked as Defense
9 Exhibit 4. And it should be there in the exhibit
10 share for you. Could you let me know when you access
11 to Exhibit 4?

12 (Defense Exhibit 4 was marked for
13 identification.)

14 A Yes, sir.

15 Q Okay. Have you ever seen this document
16 before?

17 A Yes.

18 Q What is it?

19 A It is a Patrol Utilization Summary.

20 Q And what is a Patrol Utilization Summary?

21 A It's a summary of the month, what you did in
22 that month while working inside of the institution.

1 Q Are you there, Officer McCowan?

2 A I am.

3 Q Can you hear me? Oh, okay. I think we had
4 a little --

5 A Issue?

6 Q Internet issue. Yeah. I'm not sure what
7 happened there. Maybe could we start over, and I'll
8 re-ask my question, and could we re-do the question
9 and answer?

10 A Yeah.

11 Q Because I didn't catch any of your response.
12 I apologize. So I believe the question that was
13 pending before the internet glitch there was: What is
14 a Patrol Utilization summary?

15 A A Patrol Utilization Summary is a summary of
16 what you did in that month of -- as you see, it's the
17 number of responses. You can go down the list here:
18 "Number of responses to staff assaults with
19 engagement, without." It's just a summary of what
20 happened and what did not happen during that month.

21 Q Understood. And is this a form that you
22 complete?

1 A Yes.

2 Q Okay. And do you complete this and submit
3 it to your supervisor?

4 A Yes.

5 Q And is that something you do monthly?

6 A We -- we no longer use these. It is tracked
7 through DINGO.

8 Q Understood. In May of 2020, would you
9 submit patrol utilization reports monthly?

10 A Let's see if that was -- at that point in
11 time if we were still doing them, I do not recall
12 right off. Yes.

13 Q Okay. And taking just one step back, is a
14 patrol utilization summary an example of a document
15 that you complete in DINGO now but also keep a hard
16 record of?

17 A No, sir. We no longer do the utilization
18 summaries.

19 Q And do you recall when you stopped doing
20 utilization summaries?

21 A The last one I have here is May of 2021.

22 Q Is it your understanding --

1 A Why, I do not recall.

2 Q Understood. So as you sit here today, is it
3 your understanding that you were no longer required to
4 do patrol utilization summaries starting in May of
5 2021?

6 A Yes. As far as I can recall, yes, sir.

7 Q Okay. And as you sit here today, you do not
8 have any understanding or knowledge of why you were no
9 longer required to complete a patrol utilization
10 summary as of May 2021?

11 A No, sir. I do not have any knowledge of
12 why.

13 Q Okay. Could I direct your attention to --
14 excuse me. It's PDF Page 13 of Defense Exhibit 4.
15 The Bates stamp on that page is Johnson 582 000494.
16 And when you're on that page, just let me know.

17 A Yes, sir.

18 Q Okay. Under "Types of Request," on the
19 fourth line down, do you see the line that says,
20 "Number of responses to offender fights without
21 engagement"?

22 A Yes, sir.

1 Q And do you see it says five?

2 A Yes, sir. And the monthly training log said
3 three. It must have been a typographical error on my
4 part.

5 Q So just to be clear, if we flip back to
6 Defense Exhibit 3, under total number of responses for
7 the month, as we previously talked about it says
8 three. But on Defense Exhibit 4 when you look at
9 "Number of Responses to Offender Fights without
10 Engagement," it says five?

11 A Yes, sir. It must have been a typographical
12 error on my part.

13 Q Okay. And as you sit here today, is that
14 your best recollection as to what happened or do you
15 know for a fact that you made a typographical error?

16 A I know for a fact that I would have made a
17 typographical after -- after seeing this. Yes. I
18 made a typographical error.

19 Q Understood. But this line, "Number of
20 Responses to Offender Fights without Engagement"
21 should correspond to the Patrol Canine Training and
22 Utilization time record. Correct?

1 A Yes.

2 Q There is no practical reason why these
3 reports should be different absent a mistake or
4 something else?

5 A No, sir. This was my mistake.

6 Q Understood. And then just to confirm on
7 Defense Exhibit 4, the "Number of Responses to
8 Offender Fights with Engagement," there is a one
9 listed. That is the incident with Mr. Johnson. Is
10 that correct?

11 A Yes.

12 Q Okay. Understood. Okay. I apologize.
13 It's a little bit slow getting uploaded here but now
14 you should see what's been pre-marked as Defense
15 Exhibit 5. Let me know when you have that.

16 (Defense Exhibit 5 was marked for
17 identification.)

18 A Yes, sir. I have it up.

19 Q Okay. Have you ever seen what's been pre-
20 marked as Defense Exhibit 5 before?

21 A No, sir.

22 Q Okay. Do you see at the top of what's been

1 marked as Defense Exhibit 5, it says, "Basic Patrol
2 Canine Class Spring 2018"?

3 A Yes.

4 Q Okay. And then do you see --

5 A That --

6 Q Sorry. I apologize. Please go on.

7 A That's not me.

8 Q Okay. What do you mean by that's not you?

9 A The McCowan that is listed, WRSP, that is
10 not me.

11 Q Okay. Who is that?

12 A It is another officer from Wallens Ridge
13 State Prison who went to a canine school at -- in
14 February of 2018.

15 Q Okay. Do you know what that Officer
16 McCowan's first name is?

17 A I do not, sir.

18 Q Okay.

19 A Logan maybe?

20 Q Okay.

21 A I believe.

22 Q Okay. Thank you. I know this Spring 2018

1 version was not what you attended. Is this the same
2 program, though, that you would have attended?

3 A It is the similar program. Yes.

4 Q Okay. And now you should see what's been
5 pre-marked as Defense Exhibit 6. It just went
6 through, so it should be there now.

7 (Defense Exhibit 6 was marked for
8 identification.)

9 A Yes.

10 BY MR. JOHNSON:

11 Q Okay. Have you ever seen what's been marked
12 as Defense Exhibit 6 before?

13 A No.

14 Q Okay. When you went through the canine
15 patrol training program in -- or excuse me. Strike
16 that. When you went through the canine patrol
17 training program, did you receive a summary of the
18 program similar or the same to what's been marked as
19 Defense Exhibit 6?

20 A I do not recall whether or not I received
21 anything like this.

22 Q Okay. Do you recall receiving operating

1 procedure 435.3?

2 A Yes. That's --

3 Q Do you recall receiving -- oh, excuse me.
4 Go ahead.

5 A I apologize. It's not for -- the Operating
6 Procedure 435.3 was in the training -- was part of the
7 training manual at that point in time. And to the
8 best of my knowledge, we did receive one of those
9 training manuals. I apologize. I had to clarify.

10 Q I appreciate the clarification. Thank you.
11 And is that the case for Operating Policy 420.1?

12 A The Operating Procedure 420.1 is also in
13 that training manual.

14 Q Understood. And when you received the
15 Operating Procedure 435.3 and 420.1 in your training
16 binder, did you receive the entire operating procedure
17 or only selected portions of it?

18 A No. I don't recall, sir.

19 Q Okay. Do you recall, have you ever reviewed
20 the entire operating procedure 435.3 since you've been
21 an employee at VDOC?

22 A No, sir.

1 Q Have you ever reviewed the entire Operating
2 Policy 420.1 since you've been an employee at VDOC?

3 A Yes, sir.

4 Q When was the last time you reviewed
5 Operating Policy 420.1 as an employee of VDOC?

6 A I do not recall, sir.

7 Q Do you recall your review having occurred
8 while you were a canine officer or prior to the time
9 you were a canine officer?

10 A While.

11 Q Understood. So is it safe to say that you
12 reviewed Operating Policy 420.1 in its entirety at
13 some point between 2018 and today?

14 A Yes.

15 Q When you were going through the patrol
16 canine program, do you recall receiving any training
17 on any legal case law?

18 A I don't recall, sir.

19 Q Do you have an understanding as to whether
20 patrol canine officers who are currently training
21 undergo case law training on the use of force?

22 A I do not know, sir. I am not an instructor.

1 Q Understood. But just to confirm, you
2 yourself have never undergone a VDOC-provided training
3 that provided you training on relevant case law as to
4 the use of force in a correctional setting?

5 MR. DAVIS: I'll object. The question
6 mischaracterizes the witness's earlier statement.

7 BY MR. JOHNSON:

8 Q You can answer.

9 A Oh, okay. I apologize. Can you repeat the
10 question, sir? I apologize.

11 Q Okay. No problem at all. As an employee of
12 VDOC, have you ever been provided a training from VDOC
13 on the current case law regarding appropriate use of
14 force in a correctional setting?

15 A Yes, sir.

16 Q When?

17 A During -- during correctional officer in-
18 services. They go over the policy during that time.

19 Q Do they go over the use of force policy or
20 do they go over case law?

21 A They will show some examples of case law to
22 the best of my recollection.

1 Q So you recall when you were going through
2 your correctional officer training in 2014 being
3 trained on the current case law that existed at that
4 time regarding the use of force in a correctional
5 setting?

6 A Yes. And they -- yes.

7 Q As part of your canine handling training,
8 did you receive any case law training specific to the
9 use of canines in correctional settings?

10 A Are we speaking of during the 480-hour
11 school?

12 Q At any time.

13 A Or at any time?

14 Q At any time.

15 A I do not -- I do not recall, sir.

16 Q Okay. I think we can put this document
17 away. Okay. I'm now moving in what's been pre-marked
18 as Defense Exhibit 7. And please let me know when you
19 have it.

20 (Defense Exhibit 7 was marked for
21 identification.)

22 A Yes, sir.

1 Q Okay. Have you ever seen what's been pre-
2 marked as Defense Exhibit 7 before?

3 A Yes, sir.

4 Q What is it?

5 A It's an email that I sent to Sergeant
6 Stanley.

7 Q Okay. And when did you email Defense
8 Exhibit 7 to Sergeant Stanley?

9 A The 31st of May.

10 Q Okay. And what were you communicating to
11 Sergeant Stanley in what is marked as Defense Exhibit
12 7?

13 A It reads that it doesn't look -- that he
14 changed my -- changed my -- I just wanted to let him
15 know that he had changed my report for the second
16 time. But I -- I state that it does not look he
17 changed the wording at all.

18 Q Okay. And earlier today, we spoke about a
19 disagreement you had with a Lieutenant Woods about an
20 incident report while you were a canine officer. Do
21 you recall that conversation?

22 A With you?

1 Q Yes, sir.

2 A Yes. I do.

3 Q Is this particular email the incident you're
4 talking about that you disagreed with Lieutenant
5 Woods?

6 A No, sir.

7 Q Okay. Is this a different disagreement?

8 A This wasn't necessarily a disagreement.
9 This was just me notifying my canine sergeant at that
10 time that he had slightly changed the report, not
11 anything, as it states in the email, as far as wording
12 goes it was exactly the same. He just spaced it.

13 Q Understood. Would you email Sergeant
14 Stanley every time a superior to you changed one of
15 your reports?

16 A If it was an extreme case, yes.

17 Q Why was this an extreme case?

18 A Because this was -- it had not been long
19 since myself and Lieutenant Woods had had the problem
20 to begin with.

21 Q Okay. What's the problem that you and
22 Lieutenant Woods had to begin with?

1 A The first report that he changed. I don't
2 remember the specifics.

3 Q Okay. Is this email that's marked as
4 Defense Exhibit 7 the next report that Lieutenant
5 Woods changed of yours after the report that you
6 disagreed on, but you don't remember?

7 A Yes. This is the -- this is the second
8 incident that I had. But like I said before, it was
9 nothing as far as wording goes. He left all of that
10 alone. He just spaced everything into paragraphs. As
11 this email reads, I just wanted to notify Sergeant
12 Stanley that he had tampered with a file of mine.

13 Q So you were notifying Sergeant Stanley that
14 Lieutenant Woods was tampering with a report of yours?

15 A Yes. It says in this email that "he had
16 spaced everything into paragraphs. It doesn't look
17 like he changed the wording." That's what I was
18 notifying him of.

19 Q Understood. And was there an operational
20 reason why Sergeant Stanley needed to know that the
21 report had been spaced? Or were you expressing
22 frustration that Lieutenant Woods was altering your

1 report again?

2 A I was instructed by Sergeant Stanley that if
3 Lieutenant Woods was to do anything to any of my
4 reports to immediately notify him --

5 Q And what would --

6 A -- at that time.

7 Q Excuse me. I apologize. Understood. And
8 what was your understanding of why Sergeant Stanley
9 was asking you to notify him every time Lieutenant
10 Woods changed anything about your incident reports?

11 A Why?

12 Q Yes.

13 A To avoid any issues, I would assume.

14 Q Do you know that or are you speculating?

15 A That's -- I apologize. That's probably --
16 that's probably speculation. To be sure, I do not
17 know. I apologize.

18 Q That's no problem. Does Lieutenant Woods
19 have a reputation for falsely changing incident
20 reports?

21 A I don't know that I would say that it was
22 that he -- that he falsely changed his -- those

1 reports. He -- I don't know to be honest with you,
2 sir.

3 Q Okay. Does he have a reputation for
4 altering reports in ways in which line officers
5 disagree?

6 A I don't -- I don't know, sir.

7 Q Does he have a reputation -- do you
8 understand that other line officers have had
9 frustration with their reports being changed by
10 Lieutenant Woods, similar to your experience with
11 Lieutenant Woods?

12 A No, sir. I do not know.

13 Q Do you have a memory of how many times after
14 you sent Defense Exhibit 7 Lieutenant Woods attempted
15 to alter your incident reports?

16 A Can you repeat the question, sir? I
17 apologize.

18 Q Okay. After you sent this email that's been
19 marked as Defense Exhibit 7, do you have an
20 understanding of how many times after this email
21 Lieutenant Woods attempted to change your report and
22 you had to report it to Sergeant Stanley?

1 A To my knowledge, this was the last time.

2 Q And do you have an understanding as to why
3 this was the last time Lieutenant Woods attempted to
4 change your report?

5 A I do not.

6 Q Did Lieutenant Woods for any period of time
7 regularly change your reports?

8 A No, sir. This is the only two instances
9 that I ever had issues.

10 Q Okay. And just to be clear, they're the
11 only two incidents you've had an issue with Lieutenant
12 Woods on. But as you sit here today, you don't recall
13 what the underlying issue was that you had with how
14 Lieutenant Woods was changing the words you used in
15 your incident report. Is that correct?

16 A Yes, sir.

17 Q Okay. Do you have an understanding as to,
18 in both the incident that you don't recall and the
19 incidents that's captured in Defense Exhibit 7 as to
20 whether the VDOC approved the incident reports that
21 Lieutenant Woods changed?

22 A I do not know, sir.

1 Q Do you have any understanding or were you
2 ever made aware that the reports that Lieutenant Woods
3 changed were rejected by VDOC?

4 A I did not. No, sir.

5 Q Did you ever review the reports after
6 Lieutenant Woods changed them to sign off on them?

7 A The first one, yes.

8 Q Okay. And what do you recall about
9 reviewing Lieutenant Woods's changes?

10 A The only thing that I know, he just -- he
11 changed some wording. Like I said before, once you --
12 once you submit the report, it has already been e-
13 signed by you. But any supervisor at that point can
14 change it and therefore approve it. Now, as far as
15 the changes itself, I do not know.

16 Q Okay. You should be able to see what's been
17 marked as Defense Exhibit 8.

18 (Defense Exhibit 8 was marked for
19 identification.)

20 A Yes, sir. I have it up.

21 Q Okay. Do you recognize what's been marked
22 as Defense Exhibit 8?

1 A Yes.

2 Q Okay. What is it?

3 A It's an email that was sent to me from
4 Sergeant Stanley.

5 Q Okay. And it was sent to you from Sergeant
6 Stanley on September 28, 2020. Is that correct?

7 A It looks to be. Yeah.

8 Q Do you have any reason to think that it's
9 not?

10 A No.

11 Q And why is Sergeant Stanley emailing you?
12 As you sit here today, what's your understanding of
13 why Sergeant Stanley was emailing you to put this
14 email in your and Shadow's records?

15 A Recordkeeping.

16 Q Did Sergeant Stanley ask you to keep records
17 of emails like this after every incident?

18 A No, sir. Just the ones that may have -- Mr.
19 Brown -- Mr. D. Brown filed a grievance sometime
20 after, and this is what Thelma Trapp sent to Jimmy
21 Stanley as a -- want -- he wanted me to put it in my
22 records just in case something got lost in translation

1 and we needed to find this at a different time.

2 Q Understood. So it was only select incidents
3 where Sergeant Stanley would reach out and ask you to
4 keep a record or secondary documentation of a
5 particular incident?

6 A If there was something like this that had
7 come along where he had answered -- let's see. What
8 exactly is this? This is a response to a grievance.
9 Yes. If there was a -- if he made a -- if he had to
10 respond to a grievance, we kept the -- we made a
11 record of those, a personal record of those as well as
12 he kept his.

13 Q Okay. And in Mr. Johnson's case, do you
14 recall ever receiving an email from Sergeant Stanley
15 asking you to keep any documentation or records from
16 the incident?

17 A From the -- over the -- the grievance that
18 he filed to begin with, I believe there was. Yes.

19 Q Do you recall about when that was?

20 A No. No, sir.

21 Q Okay. Thank you. I think we can put that
22 document away. I think we're done with that one.

1 So now Officer McCowan, I'm going to turn to
2 just kind of having more of a conversation with you
3 again. So right before we broke for lunch, I had
4 asked if you were familiar with Corey Johnson. Do you
5 recall that?

6 A Yes.

7 Q Okay. And I believe that you testified that
8 you were familiar with Mr. Johnson from an incident
9 that you both were involved in in May of 2020. Is
10 that correct?

11 A Yes.

12 Q And that incident occurred at the Red Onion
13 State Prison. Is that correct?

14 A Yes.

15 Q Okay. And is it correct that the incident
16 occurred on May 2nd?

17 A Yes.

18 Q And just to confirm, is there any materials
19 or references that you have in front of you to help
20 you testify?

21 A No, sir.

22 Q Okay. Thank you. So on May 2nd, were you

1 on duty as a patrol canine handler?

2 A Yes.

3 Q And were you on duty at Red Onion State
4 Prison?

5 A Yes.

6 Q Okay. Can you, as you sit here today, walk
7 me through everything you remember and recall from how
8 you became aware of Mr. Johnson and through this
9 incident?

10 A I was unaware of Mr. Johnson up until the
11 point of the incident.

12 Q Okay. So what do you recall about May 2nd
13 before you met Mr. Johnson?

14 A Just a normal working day.

15 Q Okay.

16 A Nothing particular that stands out.

17 Q Okay. And at some point, you got a call to
18 respond to an event. Is that correct?

19 A Yes.

20 Q Okay. Starting from when you received the
21 call, can you walk me through as best as you can
22 recall it everything that happened from the moment you

1 were informed that there was an incident that required
2 your response?

3 A I was monitoring a -- let's see. May the
4 2nd, 2020, I was monitoring for any movement on Bravo
5 yard. So I was on the opposite end of where the fight
6 was. I'm not sure who called the fight.

7 It was either the booth officer or the floor
8 officer, it could have been either one. They called
9 the fight. I responded. Arrived probably within, I
10 would say, 30 seconds of the call within the pod.

11 Q Okay. What happened next?

12 A As I was entering the pod -- let's see.
13 First slider or the second -- I got through the second
14 slider on the inside and witnessed Mr. Johnson and an
15 officer in close proximity with each other, and it
16 appeared as if Johnson was going towards that officer
17 in a threatening manner.

18 Q Okay. What else do you recall?

19 A I then began giving Mr. Johnson warnings --
20 oral orders. "State canine. Get on the ground or I
21 will release the dog." And he received -- not only
22 did he receive those from myself but Canine Officer

1 Baker as well. Baker was the first to respond to the
2 incident.

3 Q Okay. What happened next?

4 A After I gave the three warnings to Mr.
5 Johnson, he refused to comply with those orders and
6 began to run towards another group of inmates that was
7 on the -- let's see. Close to the cells.

8 Let's see. It was in A1, so it would have
9 been the inmates were laying scattered around the --
10 around the -- where the cells are located. And he was
11 running towards those -- in the -- towards those other
12 individuals.

13 At that point in time, I deployed canine
14 Shadow striking Mr. Johnson on the right upper-wrist
15 area right above the wrist. Let's see. I then gave
16 Mr. Johnson several consecutive -- several consecutive
17 orders to stop fighting the dog and to let me see
18 his -- and to show me his left hand.

19 After a few -- after a few -- a few moments
20 to try to get him to comply, I then bent down to see
21 if I could -- he -- he wouldn't -- unfortunately, he
22 never would show me his left hand. So I bent down to

1 see if I could physically see anything in his left
2 hand.

3 At that point in time, I did not. I then
4 verbally gave canine Shadow the command to disengage,
5 and he did so.

6 Q Is there anything else that you recall?

7 A Let's see. I then provided additional
8 security in the pod while Mr. Johnson was taken to
9 medical, and all other inmates that were in that pod
10 were frisk search -- frisk searched, and they returned
11 to their housing assignment.

12 Not only -- I'm sorry. Not only did Mr.
13 Johnson go to medical but so did the individual he was
14 in the altercation with.

15 Q Okay. Is there anything else you recall?

16 A Let's see. I believe there was a question
17 about me patting the dog in one of his grievances. I
18 do recollect -- I do recall patting the dog. And why
19 that was -- it was to reinforce the verbal call off --
20 or I'm sorry. The verbal disengagement.

21 That's -- as of right now, that's all I
22 recall. If I can add anything to that I will as you

1 ask questions.

2 Q Okay. There should be in the exhibit share
3 what's been pre-marked as Defense Exhibit 9, and it's
4 going to be a video that's been produced to us in this
5 litigation. So you're going to need to hit the
6 button. And so when you have it up on your screen,
7 please let me know.

8 (Defense Exhibit 9 was marked for
9 identification.)

10 A I have it playing.

11 Q Okay. So hit pause, and I just want to
12 confirm. So what's been marked as Defense Exhibit 9
13 is a video with the File Name that begins
14 200502181502_R0SP113HUA100CENTER_(1)_1.wmv. Is that
15 the file name that you see as well?

16 A Yes, sir.

17 Q Okay. Great. And have you ever seen this
18 particular video before?

19 A Yes.

20 Q What do you recognize this video as?

21 A It -- I don't --

22 Q Let me rephrase. What is Defense Exhibit 9?

1 A This is a video of the incident with Mr.
2 Johnson.

3 Q Thank you. And is this a video of -- let me
4 strike that. What is this area where the inmates are
5 currently called?

6 A This is Alpha 1 pod.

7 Q Okay. So this video starts with a view of
8 Alpha 1 pod from the --

9 A The center of the pod.

10 Q The center of the pod. Thank you.

11 A Yeah.

12 Q And if we look in the video before we play
13 it, there looks to be a cluster of inmates, some
14 wearing maroon shirts, some wearing white shirts, that
15 look to be on the top of the video against a wall of
16 what appear to be pay telephones? Is that --

17 A They're -- they are phones, yes. But they
18 are not pay phones.

19 Q They're not pay phones, they're just regular
20 telephones?

21 A Yes.

22 Q Okay. And so it's correct to say that these

1 individuals in the top of the video are lined up to
2 use the telephone. Is that correct?

3 A The telephone and the J Pay machine, which
4 is something that they download music on.

5 Q Oh. Understood. Yep. Okay. So I'd like
6 to start if we could and play -- oh, go ahead.

7 A Before we start the video, can we take a
8 break, please?

9 Q Sure. Yeah. How long would you like?

10 A Five, ten minutes. Just a bathroom break.

11 Q Oh, sure. Should we reconvene at, do you
12 want to just say 2:30?

13 A 2:30 sounds great.

14 MR. JOHNSON: Okay. Thank you. We'll
15 reconvene at 2:30. Let's go off the record.

16 THE REPORTER: Okay. Off record at
17 2:18 p.m.

18 (Off the record.)

19 THE REPORTER: Okay. We're back on the
20 record at 2:35 p.m. Go ahead.

21 MR. JOHNSON: Okay. Thank you.

22 //

1 BY MR. JOHNSON:

2 Q Okay. Officer McCowan, so just before we
3 took a quick break, we were just starting to talk
4 about -- or you had just kind of given us what you
5 recall about the incident on May 2nd with Mr. Johnson.
6 And so I'd like to pick up there and ask you a couple
7 questions and then we'll take a look at the video that
8 we have pulled up, which is Defense Exhibit 9.

9 So I believe you testified earlier that you
10 were the second canine officer to respond to the
11 incident with Mr. Johnson and that Canine Officer
12 Baker was the first canine officer to respond on May
13 2nd to the incident with Mr. Johnson. Is that
14 correct?

15 A Yes.

16 Q Okay. When you came into Alpha Pod A1, what
17 was the first thing that you saw?

18 A Mr. Johnson approaching the officer who had
19 gotten involved --

20 Q And is that Officer --

21 A -- in that altercation.

22 Q In the altercation. Okay. Is that Officer

1 Mullins or is that Officer Baker?

2 A Mull.

3 Q Officer Mullins?

4 A Yes, sir.

5 Q Okay. So upon entering the A1 alpha pod,
6 the very first thing that you saw was Mr. Johnson
7 approaching Officer Mullins. Is that correct?

8 A That's best recollection. Yes, sir.

9 Q Okay. And I believe you also testified that
10 you know, or you heard, that Officer Baker also gave
11 an order to Mr. Johnson that he had not complied with.
12 Is that correct?

13 A Both inmates that were involved in that
14 altercation, but Canine Officer Baker gave the same
15 warnings that I did.

16 Q Understood. Did you hear Officer Baker give
17 Mr. Johnson the verbal warnings?

18 A No, sir. No. I was not in the pod at that
19 time.

20 Q So how did you know when you came into the
21 pod that verbal warnings had been given to Mr. Johnson
22 by Officer Baker?

1 A It's a requirement.

2 Q Can you explain that?

3 A It's a requirement that we give verbal
4 warnings.

5 Q Okay. Is it also a requirement in your de-
6 escalation practices to give a verbal warning before
7 you escalate to the next level of force?

8 A Yes.

9 Q And if you are unaware that a verbal warning
10 has in fact been given, how can you escalate or not?

11 A That's why as I entered the pod, I gave
12 those same warnings.

13 Q Okay. Could you clarify that? I may have
14 misunderstood your testimony earlier. I thought you
15 testified that part of your decision to use force
16 against Mr. Johnson was that Mr. Johnson did not
17 comply with an order that Officer Baker had given him
18 and that you had an understanding of that when you
19 used force.

20 Is that correct?

21 A In part. I believe that this was
22 misunderstood. As mister -- Officer Baker enters, he

1 gives the same warnings I do, our orders of "State
2 canine, stop fighting" or whatever at that time is
3 going on whether it be "stop fighting, get on the
4 ground," whatever the case may be.

5 Officer Baker enters the pod, gave his
6 warnings and even though -- because those warnings
7 have already been given, the moment I enter any pod in
8 any given situation, I still give those same warnings.
9 The officer in the pod gave those warnings.

10 The control booth -- the control -- the
11 control room officer that was firing the 40-millimeter
12 OC round -- I'm sorry -- that was firing the 40
13 millimeter gave the same -- gave similar warnings as
14 well. It is a requirement.

15 Q Understood. But you did not know as a
16 matter of fact?

17 A No, sir. I was not there.

18 Q Understood.

19 A That's why I -- as -- that's why upon
20 entering, I gave those warnings as well.

21 Q Understood. So you were not aware as to
22 whether in fact either Mr. Johnson or the inmate he

1 was fighting with had been given any verbal warnings
2 prior to your entering the alpha pod. Is that
3 correct?

4 A Yes, sir. That is correct.

5 Q Okay. And did the warnings that other
6 officers may or may not have given, did that form part
7 of your basis to use force against Mr. Johnson?

8 A No.

9 Q Okay. Did the warnings -- well, let me
10 start over. I understand that it's your testimony
11 that Officer Baker would have given the same verbal
12 warnings that you've been trained to give. Is that
13 correct?

14 A Yes.

15 Q Are the other officers who are in the alpha
16 pod trained to give the exact same warnings as you?

17 A No.

18 Q What warnings are they trained to give?

19 A Instead of stating who they are and what --
20 instead of -- instead of saying, "State canine, get on
21 the ground or I'll release the dog," they just
22 wouldn't have said, "State canine" or "I'll release

1 the dog."

2 They would have said, "Stop fighting. Get
3 on the ground. Stop fighting. Get on the ground."
4 Something along those lines.

5 Q Understood. When you first gave your first
6 warning to Mr. Johnson, can you describe for me where
7 he was in the A1 pod?

8 A As I was -- I gave my first warning as I was
9 breaching the threshold of the Alpha 1 slider. As I
10 was looking for where the incident was, I seen what
11 was happening. Mr. Johnson was approaching that
12 officer. I then began -- started giving warnings
13 right then as I was coming through that threshold of
14 the door.

15 Q Okay. So you were giving him a verbal
16 warning to stop fighting. You started giving that
17 warning before you crossed the threshold into the pod,
18 and you were giving it as you were crossing the
19 threshold and coming into the pod. Is that correct?

20 A I was giving -- I began giving that order as
21 I was crossing the threshold into the pod.

22 Q Understood. And had you made visual contact

1 with Mr. Johnson before you gave the order?

2 A Can you repeat the question, sir? I
3 apologize.

4 Q Sure. Had you actually seen with your own
5 eyes what was going on in the A1 pod before you gave
6 the order?

7 A Yes.

8 Q Okay. So you had seen Mr. Johnson engaged
9 in a physical altercation with your own eyes prior to
10 issuing the warning?

11 A No, sir. I seen him approaching that
12 officer in a threatening manner.

13 Q Okay. Let me take a step back. Before you
14 enter the pod, are you able to see into the pod?

15 A No, sir. I have no knowledge of what is
16 going on unless what is called over the radio.

17 Q Okay. So then before you step into the pod,
18 you don't actually know, other than what's been told
19 to you over the radio what's been going on. Is that
20 correct?

21 A Yes.

22 Q So the information that you were reacting to

1 to give the verbal command to Mr. Johnson was based on
2 what had been communicated to you over the radio, not
3 based on what you were observing as you entered the
4 pod. Is that correct?

5 A No.

6 Q Okay. So how did you base the information
7 to give the command on the pod when you could not see
8 the pod?

9 A I don't understand what you're -- I think
10 we're -- I think we're having a miscommunication, sir.

11 Q Okay.

12 A We respond. We're told that there is a
13 fight and where it's at.

14 Q I understand.

15 A I come respond to the pod. I see that what
16 is happening isn't over and that Mr. Johnson is
17 approaching the officer in a threatening manner. I
18 then begin giving warnings as I see what is going on.

19 I see what is going on -- what is happening
20 with Mr. Johnson and that particular officer as I come
21 through the threshold of that door. Once I get --
22 once -- as I am going, I immediately start giving

1 warnings as I see what is going on.

2 Q I understand. So is it contemporaneous,
3 then, that you approach the threshold of the pod,
4 observe Officer Mullins in close proximity to Mr.
5 Johnson, and then issue a verbal command. Is that
6 your testimony?

7 A Yes.

8 Q Okay. So your testimony is not that as you
9 were crossing the threshold and prior to that you
10 issued the command. It was once you were in the pod,
11 you contemporaneously understand what's happening, and
12 you issue an order at that time. Is that correct?

13 A You -- I'm sorry. Somebody was at the door.
14 Can you repeat that, please? That was -- somebody
15 took my attention from me. I apologize.

16 Q That's okay. Just to confirm, is there
17 somebody in the room with you?

18 A No, sir.

19 Q Okay. Is there somebody from time to time
20 coming in to give you information?

21 A No. Somebody just looked through the
22 window, and I didn't know who it was. I didn't know

1 if they were trying to get my attention or not. I
2 apologize, sir.

3 Q Understood. And just to confirm, on the
4 screens in front of you, is it just the Veritext
5 application and the Veritext? There's no other sorts
6 of documents or anything that you're referencing or
7 looking at from time to time?

8 A No, sir.

9 Q Okay. Thank you. The virtual environment,
10 it's a little bit hard to tell and then --

11 A I understand.

12 Q Yeah. So thank you, though. I appreciate
13 that. And I apologize for having to just verify.

14 A That's fine.

15 Q It's a lot easier at times when we're all in
16 the same room and we can all, you know, transparency
17 helps.

18 Okay. So I believe my understanding of what
19 you've just testified to is that you are called to the
20 Alpha 1 pod to respond to an inmate altercation. And
21 as you are entering the pod and crossing the threshold
22 into the pod, you see Officer Mullins being approached

1 in a threatening manner by Mr. Johnson.

2 At which point, you give Mr. Johnson a
3 verbal command to lie down on the ground or you'll
4 release your canine. Is that correct?

5 A Multiple verbal commands. Yes.

6 Q Do you recall how many?

7 A No, sir. I would say two to three. Three
8 would be most -- three yeah.

9 Q Understood.

10 A Yeah. We're going with it. As I recall,
11 three -- there was three verbal warnings that I gave.

12 Q Okay. And what do you recall was Mr.
13 Johnson's response, either physical or verbally, to
14 your warnings?

15 A There was no response.

16 Q Can you describe what you mean by that a
17 little bit more?

18 A There was no response as far as there was
19 no -- he physically nor verbally responded to my
20 orders.

21 Q Understood. So from your perspective, your
22 orders were just ignored and Mr. Johnson continued to

1 engage in whatever he was engaging in?

2 A Yes.

3 Q Understood. When you say that you entered
4 the A1 pod and that you observed Mr. Johnson
5 approaching Officer Mullins in a threatening manner,
6 what do you recall about Mr. Johnson that made you
7 believe he was approaching him in a threatening
8 manner?

9 A Close fisted.

10 Q Okay. Anything else?

11 A Body language was somewhat -- I would say
12 combative or closed in. It appeared as if that there
13 was a staff assault about to take place at that point
14 in time.

15 Q Okay. So I just want to confirm that I
16 understand what you just said. So you understood that
17 Mr. Johnson had a closed fist and closed-in body
18 language that was suggestive to you based on your
19 training and experience that he was about to engage in
20 a physical altercation with Officer Mullins
21 imminently?

22 A It -- it appeared that way. Yes, sir.

1 Q Understood. Is there anything else besides
2 the closed fist and the turned-in body language of Mr.
3 Johnson that led you to believe that he posed an
4 imminent physical threat to Officer Mullins?

5 A He was approaching Officer Mullins. Other
6 than --

7 Q And when you --

8 A And other than that no.

9 Q Other than that, no. Thank you for
10 clarifying. And by "approach," what do you mean? Do
11 you mean walking --

12 A Walking -- walking towards or they were
13 fairly close, so he was walking towards.

14 Q So as you were entering the A1 pod, Mr.
15 Johnson would have been walking toward Officer Mullins
16 as you're entering, and that's when you're yelling
17 your commands. Is that correct?

18 A Yeah. And then --

19 Q Okay.

20 A Yes.

21 Q Oh, please. If there's something, please go
22 ahead. I didn't mean to.

1 A Yes.

2 Q Okay. Was there other -- sorry. Let me
3 strike that. Let me re-start the question. Given
4 that Officer Baker had already entered the pod and
5 engaged his canine, is it possible that Mr. Johnson
6 did not hear your commands given the noise from the
7 dog that Officer Baker had engaged?

8 A No, sir. When we give commands, we are
9 pretty well screaming them.

10 Q Okay. So in your opinion, you know --

11 A Yes. In my opinion, he -- there was no
12 reason he did not hear those commands.

13 Q Understood. So just to confirm, in your
14 opinion there is no way Mr. Johnson could not have
15 heard your command to cease fighting and lay on the
16 ground?

17 A Unless he has a disability that I was not
18 aware of.

19 Q Understood. And at this point in time,
20 which is after you've given your third verbal command,
21 had you seen Mr. Johnson possess any weapons?

22 A Up to that point, no.

1 Q Okay. Did you have any information given to
2 you over the radio that Mr. Johnson had used a weapon
3 to attack the other inmate that he was engaged with?

4 A No.

5 Q At the time you gave your last command, I
6 understand that you've testified that you believed
7 Officer Mullins was at imminent risk of harm from Mr.
8 Johnson. Was there any other inmates or officers who
9 you felt were at imminent risk of harm?

10 A Yes. As I was coming through the door, he
11 first approached Officer Mullins in a threatening
12 manner. I began giving warnings. He then turned away
13 from Officer Mullins and started running towards
14 another group of inmates that were lying face down
15 near the cells on the -- if we're looking at it from
16 the center view, it would have been on the right-hand
17 side.

18 Q Okay. As you sit here today or at the time,
19 did you have an understanding that that group of
20 individuals that you believe Mr. Johnson was running
21 towards, did you believe they were in danger from Mr.
22 Johnson?

1 A Yes.

2 Q And why did you believe that?

3 A He was running towards then with closed
4 fists, closed-in body language, looked as if he was
5 ready to fight again.

6 Q Understood. But it could have been that he
7 was running away from the other canine that was
8 attacking the individual who he was in a fight with.
9 Correct?

10 MR. DAVIS: Objection. Calls for
11 speculation.

12 BY MR. JOHNSON:

13 Q You can answer.

14 A I do not know.

15 Q Okay. So after giving your third warning to
16 Mr. Johnson, prior to making a decision to release
17 your canine, did you consider not releasing your
18 canine?

19 A Yes. I always consider it.

20 Q Okay. And what were the considerations that
21 were going through your mind at that time?

22 A What was the cost of not using force versus

1 the cost of using force.

2 Q Okay. And can you talk me through, like, I
3 know it was on the fly, but the calculus you were
4 making at that time specifically that led you to use
5 force in this instance?

6 A Other inmates laying on the ground. Mr.
7 Johnson was standing, running, being combative. If at
8 that point he decided to assault another inmate that
9 was already laying on the ground, he could very easily
10 crush his skull -- crush the other inmate's skull
11 before I could have ever done anything about it, and
12 that would have been something else I would have had
13 to have answered for.

14 Instead of me explaining why I did
15 something, I would be explaining why I didn't do
16 something.

17 Q Understood. So after you made the
18 determination that based on what you were observing in
19 the pod after giving your third verbal warning to Mr.
20 Johnson, you decided to release your canine at that
21 time. Is that correct?

22 A Yes.

1 Q Okay. So once you made the decision to
2 release your canine, what do you recall happened last?

3 A Canine Shadow struck -- I'm sorry, engaged
4 inmate -- or Mr. Johnson on the right wrist, right
5 above the right wrist -- right above the wrist,
6 stopping said final actions that I was speaking of
7 earlier.

8 Q Okay.

9 A Would you like me to continue to go?

10 Q Yes, please. Yes. Please.

11 A Mr. Johnson -- I worked my way around at the
12 table -- a way around the table 'cause he -- the way
13 that he landed, he was laying very in close proximity
14 to a table, so I had to work my way around that.

15 I then gave him multiple orders to stop
16 fighting the dog and to show me his left hand. I'm
17 not sure if he never -- I can't say whether he never
18 heard me or just ignored it. Said show it so I could
19 see his left hand.

20 I then bent down to see if I could visibly
21 see anything in his left hand. I did not. I then
22 verbally disengaged canine Shadow.

1 Q Understood. Okay. So I'd like to break
2 down before we watch the video a little bit about what
3 you can recall now or just before we watch about the
4 time in which you first deployed Shadow on Mr. Johnson
5 and the time that you call or give Shadow the command
6 to disengage.

7 Do you have a recollection of what happened
8 after what happened or where Shadow first engaged with
9 Mr. Johnson?

10 A There was only one engagement.

11 Q Okay. Can you describe it for me?

12 A It was on the upper -- I'm sorry, lower
13 right arm upper -- right above the wrist.

14 Q Okay. And what do you recall happening
15 after Shadow engaged Mr. Johnson on the lower-right
16 arm?

17 A Mr. Johnson complied with orders to get on
18 the ground. I then worked my way around to take the
19 dog off at that point and see that he is hiding his
20 left hand from me. I then tell him to stop fighting
21 the dog and to show me his left hand multiple times,
22 and he refused to do so.

1 And that's when I physically looked under
2 him to see if I could see a weapon or anything that he
3 could use to harm me or any other individual in the
4 pod. And then I verbally disengaged Canine Shadow.

5 Q Understood. So from your perspective, Mr.
6 Johnson had not complied with your orders until he was
7 on the ground and you were able to look under him to
8 verify that there was no weapon on his person or in
9 his left hand. Is that correct?

10 A He never complied completely. I took it on
11 good faith that there was nothing in his left hand at
12 that point.

13 Q Okay. Are you trained that you are able to
14 make subjective determinations about when an inmate is
15 complying with an order for purposes of disengaging
16 use of force?

17 A I'm sorry. Can you repeat the question,
18 sir?

19 Q Sure.

20 A I don't believe I understand what you're
21 asking.

22 Q Sure. In your training, are you permitted

1 pretty wide latitude to make a judgment call as to
2 when or what qualifies as complying with an order that
3 you get?

4 A Policy sets the standards and then we decide
5 at what point that policy doesn't necessarily work in
6 real life because as policy states -- so to gain
7 compliance, you see that you're supposed to have your
8 legs crossed, both hands out, complying with all
9 orders.

10 I subjectively made the decision to take --
11 to disengage canine Shadow to prevent any further
12 damage to Mr. Johnson even though he would not show me
13 his left hand. He was not in 100 percent compliance,
14 I disengaged canine Shadow regardless because I did
15 not want to cause any undue damage.

16 Q Understood. So to just confirm, in terms of
17 policy, Mr. Johnson never complied with your order.
18 Notwithstanding, you still called off your canine in
19 this particular instance?

20 A Yes.

21 Q And the reason that you called off your
22 canine when you did was because you did not want to

1 cause any further injury to Mr. Johnson beyond what
2 had already -- what he had already sustained up to
3 that point?

4 A Yes. That is correct, sir.

5 Q Thank you. And at the outset of today,
6 which I know seems like a long time ago, we were
7 talking about a concept called bite and hold as part
8 of your training. Do you recall our conversation
9 around that?

10 A Yes.

11 Q Okay. And do you recall testifying that you
12 were familiar with bite and hold within the
13 correctional canine training application, but you were
14 unaware of bark and hold within the correctional
15 canine setting. Is that correct?

16 A I am not aware of the bark and hold.

17 Q Understood. And when you released your
18 canine on Mr. Johnson, was the canine in bite and hold
19 mode?

20 A I don't necessarily think I could call it a
21 mode.

22 Q Okay. Would technique be a better -- was

1 your dog engaged in a bite and hold technique?

2 A Yeah. That's probably -- yeah.

3 Q Understood. Thank you. Apology for the
4 terminology. I --

5 A That's all right.

6 Q No tricks, just trying to get it right.
7 Okay. All right. Do you still have Defense Exhibit 9
8 pulled up and loaded on your screen?

9 A Yes.

10 Q Okay. So we're not going to watch the
11 entire video, but I'd like for us to play through the
12 beginning of the video up until probably around the 50
13 second mark. So if you could watch maybe the first
14 minute or so of the video and then let me know once
15 you've watched it and then we'll kind of go back
16 through it, but I'd like you to watch it once first.

17 (Video played.)

18 A I'm at 50.

19 Q Okay. Let's pause there. So if you scroll
20 back to the 28 second timestamp and just let me know
21 when you're there.

22 A You said 28?

1 Q Yes, sir. 28 seconds, yes.

2 A Yeah.

3 Q Okay. So I'll just kind of talk as I play
4 it here on mine. But if you play it, what it appears
5 in the top-left part of the video, there is an
6 altercation in the area where the phones and J Pay
7 machine are that we were speaking about earlier.

8 And it appears that two inmates are just now
9 at this timestamp engaged in an altercation. Is that
10 correct?

11 A Yes.

12 Q And do you understand that one of these
13 inmates is Mr. Johnson?

14 A Yes.

15 Q And this is the altercation that we've been
16 describing that you respond to? This is the beginning
17 of it. Is that correct?

18 A Yes.

19 Q Okay. So if we continue to play the video
20 through to the 32-second mark. Let's get to that
21 point and then pause it.

22 A There.

1 Q Okay. So it looks like in the middle of the
2 A1 pod here, there are three tables that are aligned
3 on a white line that bisects the room. And towards
4 the top, there appears to be a correctional officer.
5 Is that correct?

6 A Yes.

7 Q And the correctional officer is Officer
8 Mullins. Is that correct?

9 A Yes.

10 Q Okay. And too, kind of off to the right off
11 Officer Mullins appears to be a door with a window in
12 it. Is that the A1 pod slider that you were referring
13 to earlier that you came through as the threshold into
14 the A1 pod?

15 A Yes.

16 Q Okay. So if we continue to play the video
17 through to 35 --

18 (Video played.)

19 A Okay.

20 Q What we just saw from 30 to 35 is Mr.
21 Johnson engaged on the ground with another inmate in
22 what appears to be a fist fight. And Officer Mullins,

1 we don't have audio, but we can see Officer Mullins
2 responding with what appears to be a chemical agent of
3 some sort.

4 A Yes.

5 Q Of some sort. Is that correct?

6 A Not only -- let's see. Let me rewind just a
7 buzz. At -- I'll say, let me show you here. At 33,
8 you can see a small puff of dust hit right behind
9 those two -- the two that's in an altercation.

10 Q Oh, yeah. Yeah.

11 A Not only were the -- was the officer
12 utilizing OC, but the booth shot an OC powder round as
13 well.

14 Q Understood. Thank you. So the booth OC
15 powder round that was deployed is at the 33 stamp as
16 you were just describing the puff of white that we see
17 on the video?

18 A Yeah.

19 Q Understood. And then subsequent to that
20 beginning around the 34 or 35 mark, we see Officer
21 Mullins then secondarily coming over to deploy a
22 chemical agent as well?

1 A Yes.

2 Q Understood. And then if we let the video go
3 a little bit longer to about 40 -- one moment here.

4 A Forty?

5 Q Excuse me. If you let the video play
6 through to the 55 mark, 55 second.

7 (Video played.)

8 A There.

9 Q Okay. So what we just saw on the video is
10 Mr. Johnson and the other inmate continue to be
11 engaged in a physical altercation in around the same
12 spot in the A1 pod. Officer Mullins ceased using his
13 chemical agent and backed off about 15 feet away from
14 the altercation.

15 And it appears that every inmate in the pod
16 other than Mr. Johnson and the inmate that he's
17 fighting is on the ground and complying with Officer
18 Mullins's command in the pod and the commands coming
19 from the command booth. Is that correct?

20 A Yes.

21 Q Thank you. So if you look in behind the
22 slider that we were just talking about a few minutes

1 ago, you can see what appears to be an officer and a
2 canine come through a secondary -- you know, from a
3 secondary room. Do you understand that that's Officer
4 Baker?

5 A Yes.

6 Q Okay. So let's continue to play the video
7 from the 55 mark.

8 (Video played.)

9 BY MR. JOHNSON:

10 Q And if you stop it at the 58 to just
11 confirm, that will be Officer Baker crossing the
12 threshold with his canine into the pod. Is that
13 correct?

14 A Yes.

15 Q So at the time that Officer Baker crosses
16 the threshold into the pod, Officer Mullins is pretty
17 far away from the fight between Mr. Johnson and the
18 other inmate. It's hard for me to guess, but it looks
19 about 15 to 20 feet. Is that accurate?

20 A Yeah. Yes. It's fairly accurate.

21 Q Okay. And so Officer Baker enters the pod
22 and immediately appears to go straight to the -- the

1 altercation. And we can see that up through timestamp
2 1:02. And it looks like at timestamp at 1:02 is when
3 Officer Baker and his canine engage. Is that your
4 understanding?

5 A Between 1:02 and 1:03, yes.

6 Q Okay. So again, I know you're not here,
7 would it be your belief that similar to you at this
8 moment at the 59-mark, Officer Baker is giving verbal
9 commands to "Stop fighting or I'll release my canine"?

10 A Let's see. Yes. Let's -- I -- about 58 --
11 between 58 and 59.

12 Q Understood.

13 A Because as --

14 Q You can sort of see --

15 A You're coming -- as you're coming -- the
16 location of where they are, as you're coming through
17 that slider, you can actually see what's going on
18 before you cross the threshold.

19 Q Okay.

20 A But he -- yes. He -- yeah. He was
21 giving -- once he crossed the threshold, he then began
22 giving orders.

1 Q Okay. So then from, you know, around the
2 58-mark, 59-mark as Officer Baker is giving the
3 commands, he is coming in and he is observing that the
4 fight is continuing and that there does not appear to
5 be any response to any verbal commands that are being
6 given based on the fact that the fight is continuing.
7 Is that your understanding?

8 A Yes, sir.

9 Q Okay. And as we continue to play the video
10 at around the 1:02 or 1:03 mark as the fight is
11 continuing, that is when Officer Baker releases his
12 canine on the other inmate that Mr. Johnson is
13 fighting with. Is that correct?

14 A Yes, sir.

15 Q Okay. Now, if we let the video play through
16 to the 1:08 mark.

17 (Video played.)

18 A I'm on 1:08.

19 Q Thank you. If we look back to where the
20 slider was, the door is open so we can't see the
21 slider, but the threshold is there. There looks like
22 there is an officer coming from the same location that

1 Officer Baker had.

2 Do you believe that that is you, Officer
3 McCowan?

4 A Yes.

5 Q Okay. And so when you are coming out -- and
6 what room are you coming out of here in this 1:08
7 timestamp?

8 A That is the vestibule area.

9 Q Okay. Is the vestibule where your canine is
10 kept when you're not on patrol or otherwise using the
11 canine?

12 A No.

13 Q Okay. What's in the vestibule?

14 A Sergeant's office.

15 Q Understood. Why were you in the vestibule
16 at that moment?

17 A You had to cross -- you -- to get to the
18 front door, you have to cross the vestibule where the
19 sergeant's office is to get into the pod.

20 Q Understood. Okay. So if we play from
21 the -- and sorry. Just to confirm. As of this
22 moment, the 1:08 mark, you have been informed that

1 there is a fight in the A1 pod that you need to
2 respond to, but you have no other information. Is
3 that correct?

4 A Yes.

5 Q Okay. So if we play it from the 1:08
6 mark -- I'm sorry. To just the 1:10 mark.

7 (Video played.)

8 A I'm on -- well, I'm on 1:10, 1:11. Yes.

9 Q Okay. If you could go to 1:10 just because
10 it's the frame just before.

11 A 1:10.

12 Q So this appears to be the frame where you're
13 maybe a step or two before the threshold but certainly
14 before the threshold of the A1 pod. But as you were
15 just testifying earlier, you appear to be able to see
16 into the pod to an extent from there. Is that
17 correct?

18 A Yes. Yes.

19 Q It doesn't look to me, given the angle of
20 where you are and where the fight is, that you could
21 necessarily see the altercation, particularly given
22 Officer Baker's back is to you, so it appears he may

1 have been blocking any view. But do you have a
2 different memory that you were actually able to see
3 the altercation from your vantage point at the 1:10
4 mark?

5 A Let me play it.

6 Q Sure. Yeah. Take your time, please.

7 A At the 1:10 mark, it's more I see what -- I
8 see the location.

9 Q Understood.

10 A What -- I don't exactly know what is going
11 on at that point. When it gets to 1:11, that's when I
12 realize that it looks as if Mr. Johnson is fighting
13 with that officer or appearing to approach in a
14 threatening manner.

15 Q Okay. Understood. And let's maybe break
16 that down. So you're coming through the door at the
17 1:11 mark, and you're now sufficiently beyond Officer
18 Baker to be able to see over Officer Baker's left
19 side?

20 A Yes.

21 Q And you're in the room enough that you're
22 able to see before Officer Mullins what's going on on

1 the ground to the left of Officer Baker and to the
2 right of Officer Mullins, and you're now able to
3 identify that Mr. Johnson is still, at least at the
4 1:11 mark, appear to be engaged on the ground with
5 another inmate. Is that correct?

6 A From this view, that's what it looks like.

7 Q Okay. And do you have a different memory of
8 something else happening in reality at this time?

9 A No, sir. But it -- it was like -- we're one
10 second, two seconds, it doesn't mean -- in real life,
11 it happens very quickly.

12 Q Oh, understood Officer McCowan. And I'm
13 more just trying to go frame-by-frame.

14 A Yes, sir.

15 Q But I understand in context --

16 A It went from he was fighting him to
17 approaching the officer in one second.

18 Q Yes. Understood. So if we play to the
19 next, it's exactly as you described. We can see.
20 Let's actually start from the 1:08, and we'll play
21 through to the 1:12.

22 (Video played.)

1 BY MR. JOHNSON:

2 Q So let me know when you're at the 1:12.

3 A At the 1:12.

4 Q Thank you. So this is exactly, I believe,
5 as you were just describing. So we see it from the
6 1:11, it appears that Mr. Johnson is still on the
7 ground but then, to the 1:12 he pops up. He stands up
8 and appears to be moving away from Officer Mullins.
9 Is that correct?

10 A Let me play it again. Between -- from the
11 time -- oh, hold on. I accidentally -- hold on.
12 Between 9 and 11, he stands. So 10, I can't really
13 see very little of what's going on. By the time it
14 gets to 11, I am then able to see into the pod over
15 Officer Baker's left shoulder.

16 At this point -- from this view, from what I
17 recall, Mr. Johnson has already began to stand and go
18 toward Officer Mullins. As I was coming through the
19 threshold here, I started giving warnings. He pushes
20 Officer Mullins out of the way and begins going
21 toward -- well, I -- let's see.

22 Yeah. We'll stop there right there at 1:11.

1 Q Okay. So let's go maybe just frame-by-
2 frame. So at the 1:11, I certainly see Mr. Johnson
3 pop up. And it's hard to make out, but it looks like
4 when Mr. Johnson pops up, Officer Mullins's right arm
5 comes out. Do you see that?

6 A It looks like that on -- it does appear that
7 way on video. I can't really -- like you said, it's
8 hard to make out.

9 Q Yes. It's hard to make out, but it does
10 appear that his right arm is raised from the 1:10 to
11 the 1:11 in what looks to be a straight line across
12 Mr. Johnson's chest. Is that correct?

13 A It does look that way. It might be his left
14 arm. I -- it's -- like you said, it's hard to -- it's
15 hard to see. It looks like his right arm is more
16 towards his waist.

17 Q Understood. But it looks like an appendage
18 of Officer Mullins is raised and is pressing against
19 or making contact with Mr. Johnson. Is that correct?

20 A It does look that way from a camera -- from
21 this camera angle. Yes, sir.

22 Q Okay. Understood. Thank you. And if we

1 press play from there, it looks like Officer Mullins's
2 arm then drops down, at which point Mr. Johnson
3 stumbles forward a few feet. And we see that in the
4 1:12. Is that correct?

5 A 1:13. Let me try that again.

6 Q Sorry. Yeah.

7 A Yes. It appears that -- it appears as much.
8 Yes, sir.

9 Q Okay. So it would appear, then, that Mr.
10 Johnson's momentum was being held up by Officer
11 Mullins. At which point, when Officer Mullins moved
12 his arm, Mr. Johnson's momentum carried him forward a
13 few more feet as he stumbled, which is what we see in
14 1:11 and 1:12. Is that correct?

15 A I'm not sure, sir. At that point, the
16 intentions were unclear. As far as seeing it, it's
17 hard to say. I'd rather not speculate on what was
18 actually going on. You see the camera view, you see
19 what appears to be going on.

20 I can't think that I can speculate on what
21 is actually happening.

22 Q Understood. But do you disagree that the

1 camera video that we just watched shows Mr. Johnson
2 standing up, Officer Mullins raising an arm, and then
3 lowering that arm, and then Mr. Johnson stumbling
4 after that arm is removed?

5 A Yes.

6 Q Okay. Thank you. So from the 1:12 mark, we
7 see Mr. Johnson stumble. And at that point, at the
8 end of the 1:12 as it turns to 1:13 begins to turn his
9 body back towards the inmate he was fighting who was
10 on the ground. Is that correct?

11 A Turns back toward the inmate? Yes. He
12 does. He was fighting with him --

13 Q And at this time -- oh, thank you. Sorry
14 about that. And at this moment is when we see you,
15 Officer McCowan, and your canine Shadow about maybe
16 eight feet away from Mr. Johnson, and you now have
17 issued your second or --

18 A I was starting on the second one. Yes.

19 Q Starting on the second verbal warning. Is
20 that correct?

21 A Yes.

22 Q Okay. And at this point, what are you

1 observing about Mr. Johnson at this point?

2 A He was -- at this point, he had turned back
3 toward the inmate at this point. And he was still
4 standing acting as if he was a threat. As you can see
5 on camera, his hands are balled in a fist-like manner.

6 And at this point, I see that he may very
7 well again become assaultive towards that staff member
8 or the inmate that is complying with orders and lying
9 on the ground.

10 Q Okay. And if we click through to just to
11 play to the 1:13 mark. Let me know when you get
12 there.

13 A I'm there.

14 Q So I believe what we saw in the 1:12 to 1:13
15 is that Mr. Johnson completes his body turn back
16 towards the inmate that's on the ground and then
17 proceeds to take at least what I count as two steps
18 back? Do you agree?

19 A Yes. At -- yes. Yeah. Yes.

20 Q And to confirm, this is you, Officer
21 McCowan, now closer to Mr. Johnson after he's taken a
22 few steps back. And so you've observed Mr. Johnson

1 taking two steps back at this point. Is that correct?

2 A According to the camera, yes.

3 Q Okay. And have you --

4 A I don't personally recall the details. The
5 things -- these things happen in a mere matter of
6 seconds.

7 Q Understood. So at the 1:13 mark, have you
8 given your third warning yet?

9 A No.

10 Q Okay.

11 A I'd finished my second one.

12 Q Understood. So now, if we click through to
13 the 1:14 and then pause on 1:14.

14 A Yes, sir.

15 Q Okay. What appears to happen between 1:13
16 and 1:14 is that you continue to come closer to Mr.
17 Johnson. Mr. Johnson takes another step back in an
18 apparent attempt to sidestep Shadow going to what
19 appears to be engage him on his right side. Is that
20 correct?

21 MR. DAVIS: Objection to form. You can
22 answer.

1 THE WITNESS: Yes. It does appear that
2 way. Yes, sir.

3 BY MR. JOHNSON:

4 Q So as of the 1:14 mark, had you already
5 deployed Shadow and determined that it was proper to
6 use force against Mr. Johnson?

7 A Between this deployment and the next, I gave
8 another warning giving him another opportunity to
9 comply with orders and to lay on the ground and stop
10 being a threat. But what was your question, I'm
11 sorry?

12 Q That's okay. Understood. I appreciate your
13 response. So it looks like between the 1:13 mark and
14 the 1:14 mark after you've given your second verbal
15 warning that you instruct Shadow to engage Mr.
16 Johnson.

17 And we see that in 1:13 and 1:14 when Shadow
18 goes to engage Mr. Johnson on the right, and he takes
19 another step back in what appears to be a side-
20 stepping maneuver to avoid being bitten by Shadow. Is
21 that correct

22 A Yes, sir.

1 Q Okay. And after making the decision to
2 deploy Shadow and use force, you give Mr. Johnson
3 another opportunity to comply with the orders, and you
4 give a third verbal warning to stop or that you will
5 use force again against Mr. Johnson. Is that right?

6 A Yes, sir.

7 Q Okay. So from the 1:14 mark to just play
8 through 1:15 please.

9 (Video played.)

10 A I'm there.

11 Q I believe what we see here is Mr. Johnson
12 continuing to take two more steps back both from
13 Officer Mullins and from yourself. Is that correct?

14 A Yes.

15 Q Okay. At this point, when Mr. Johnson has
16 taken two steps back and you've given another warning
17 to him to cease engaging, who is in imminent threat of
18 danger at the 1:15 mark?

19 A Had I not deployed, he could have -- in the
20 direction he was going, those six inmates just above
21 and the two to three that we can see below.

22 Q Okay. I believe it would appear to be one

1 inmate to Mr. Johnson's right, although his back to
2 that inmate, about eight or so feet away diagonally to
3 the right from Mr. Johnson. And then in the bottom-
4 right corner about maybe 25 to 35 feet away, we see
5 other inmates lying on the ground.

6 Are those the inmates you're referring to
7 are in imminent danger from Mr. Johnson at the 1:15
8 mark?

9 MR. DAVIS: Objection to the form of
10 the question, but Mr. McCowan, you can answer.

11 THE WITNESS: Yes.

12 BY MR. JOHNSON:

13 Q And the movements that Mr. Johnson has made
14 up to this point, the 1:15 mark, are these the
15 movements that you were talking about earlier when you
16 were describing Mr. Johnson running toward a group of
17 inmates? Are the movements that we have seen up
18 through the 1:15 mark those movements?

19 A As I recall them, yes.

20 Q Okay. Are there any other movements up
21 until this point that you recall that we haven't seen
22 on this video that led you to believe that Mr. Johnson

1 was running towards or presenting an imminent risk to
2 other inmates?

3 A No, sir.

4 Q And if we could actually -- and I apologize
5 for the bouncing around on the video. There's not a
6 better way to do this. If we can start at the 1:13
7 mark and then we're going to play through to the 1:16.
8 Or excuse me, 1:17.

9 (Video played.)

10 A 1:17.

11 Q Okay. Excuse me. Thank you. So what we
12 see from the 1:14 to 1:17 mark is Mr. Johnson now
13 having taken another few steps away from both you and
14 Officer Mullins. Is that correct?

15 A Yes.

16 Q We also see from the 1:15 to the 1:17 that
17 your canine, Shadow, appears to be barking at Mr.
18 Johnson, and Mr. Johnson continues to back away from
19 canine Shadow. Is that correct? Specifically, from
20 1:15 to 1:16?

21 A It -- he does not appear to be barking. It
22 looks as if his mouth is closed.

1 Q Understood. Okay. Thank you. So at what
2 point between the 1:13 mark and the 1:17 mark did you
3 decide for the second time to deploy Shadow on Mr.
4 Johnson?

5 A At the one -- between the 1:14 and the 1:15
6 after giving -- after saying -- after giving him my
7 warnings twice. "State canine. Get on the ground.
8 I'll release the dog" twice. He then stepped out of
9 the way of the deployment and at that point in my
10 perception I seen that he was -- was attempting to be
11 a threat to someone else in that immediate area.

12 At that point in time, I did not know who or
13 why. But at about 1:15, I would say I make that
14 decision. Well, make that -- I make the decision to
15 use force if the third command was not followed.

16 Q Understood. And that's what we see in the
17 1:14 and 1:15 even though we can't hear it because the
18 video is you giving the third command. But then we
19 obviously, you know, but we can see that, you know,
20 the deployment around the 1:15, 1:16 mark is the third
21 deployment of the canine. Is that correct?

22 A More between 15, 16, to 17.

1 Q Got it. Okay. So what we see in 16 then,
2 what it looks like is Shadow first beginning to engage
3 Mr. Johnson. Is that correct? On his right arm?

4 A Yes. Yes.

5 Q Got it. So at the 1:16, Shadow engages Mr.
6 Johnson on the right arm. And then if we keep playing
7 through, it looks like at the end of the 1:17, Shadow
8 has continued to engage on the right arm but to pull
9 Mr. Johnson continuously down to the right so he's now
10 hunched over a bit. Shadow is still engaged. Is that
11 correct?

12 A Yes.

13 Q Okay. And then from 1:17 to 1:20, Shadow
14 actually drags Mr. Johnson to the ground, and Mr.
15 Johnson by the 1:20 mark is fully on the ground on his
16 stomach is what it appears from the video. Is that
17 correct?

18 (Video played.)

19 MR. DAVIS: Objection to form. Go
20 ahead and answer.

21 THE WITNESS: Can you repeat the
22 question, please? I apologize.

1 BY MR. JOHNSON:

2 Q Of course. No problem. It appears by the
3 1:20 mark that Mr. Johnson is completely on the form
4 on his stomach. Is that correct?

5 A Yes. But where you're -- the -- yes. He is
6 for the most part on the ground by 1:20.

7 Q Okay. And Shadow is still engaged on Mr.
8 Johnson's right arm. Is that correct?

9 A Yes.

10 Q Okay. And at this time, what are you saying
11 to Mr. Johnson?

12 A From -- let's see. From the time the
13 engagement starts, which is about 16. And he stays on
14 his -- he's on his feet completely until about 1:19.
15 And by 1:20, he is on the ground.

16 "Get on the ground. Get on the ground and
17 stop fighting the dog. Get on the ground."

18 Q All right. Is this when you're looking for
19 a weapon?

20 A No.

21 Q Okay. Did you believe that Mr. Johnson had
22 a weapon at this point in time?

1 A I was unsure at that point.

2 Q Okay. And if we keep watching the video,
3 from 1:20 to about 1:29, Shadow is still engaged on
4 Mr. Johnson. Is that correct?

5 (Video played.)

6 A Yes.

7 Q Okay. So then, the engagement with Mr.
8 Johnson, just by looking at the video, appears to
9 start at the 1:16 mark and lasts through the -- it's a
10 little bit hard to tell, but it's at the 1:34 or 1:35
11 mark? Or is it longer?

12 (Video played.)

13 A I'm sorry. Let's see. 1:40 -- let's see.
14 1:41. Between 1:41 and 1:42.

15 Q Understood. So it starts at the 16 and then
16 goes to the 41, 42?

17 A Yes.

18 Q Understood. Okay. And so now that we have
19 just the parameter, let's go back to the 1:21, 1:22
20 mark when Mr. Johnson is first brought down to the
21 ground.

22 So now that Mr. Johnson is on the ground,

1 and it appears that Shadow has continued to engage
2 him, what imminent threat are you seeing to continue
3 to use the canine on Mr. Johnson at the 1:21 mark?

4 A Possibility of a weapon.

5 Q Okay. But again, you didn't have any reason
6 to believe he had a weapon?

7 A No.

8 Q And playing forward from 1:21 up through
9 1:46, is the reason that you continued to use force
10 against Mr. Johnson because you were unsure of whether
11 he had a weapon?

12 A Yes.

13 Q Is there any other reason --

14 A And that he would not show me his left hand.
15 I apologize for interrupting.

16 Q Oh, no. I apologize. So could you repeat
17 your answer?

18 A Yes. I was unsure of whether or not -- the
19 possibility of the weapon was there, and I was
20 attempting to get him to show me his left hand so I
21 could make sure that there was no weapon in his left
22 hand that he had tucked under his chest at that point.

1 Q Okay. Given from where Mr. Johnson is at
2 the 1:21 mark, even if he had a weapon, what's your
3 understanding of how he could have caused imminent
4 harm from the position he was in?

5 A If I were to disengage, and he had a weapon,
6 I would be stabbed. I would -- he'd jump up if the
7 dog was not engaged and he had -- and I took him off
8 while he still had a weapon in his possession, I just
9 put every -- myself, canine, and every other
10 individual in that pod back into danger of being
11 stabbed or any sort of homemade weapon that can be
12 made. Whether it's a soap in a bar sock -- or a bar
13 of soap in a sock or a homemade knife.

14 Q Understood. And is that determination that
15 you just described, were you trained to -- let me
16 start over. Sorry. Is your understanding that until
17 you can verify somebody doesn't have a weapon that you
18 should treat them as if they do? For purposes of use
19 of force?

20 A Can you repeat the question, please? I
21 apologize.

22 Q No problem.

1 A I don't believe I understood you the first
2 time around.

3 Q That's not a problem. Let me try to ask it
4 a clearer way. Is the justification for the use of
5 force that an inmate may have a knife or a homemade
6 weapon --

7 A Yeah.

8 Q Is that -- is that a reasoning that you are
9 trained to react with a use of force to if you don't
10 know that an inmate has a knife or a homemade weapon?

11 A Not necessarily. We have to go off of what
12 we know as we are entering a pod where there is an
13 altercation that has happened. And once we respond,
14 we have to add what we know to what we are seeing.

15 Q Understood. So what is it that you saw,
16 knowing that Mr. Johnson had fought another inmate,
17 been in close proximity to Officer Mullins, and been
18 next to the individual who Officer Baker deployed his
19 canine on, what did you see that led you to believe
20 that he would pull out a knife on you as compared to
21 earlier in the altercation?

22 A That he would not show me his left hand.

1 Q And that's the same left hand that he had
2 balled up in a fist when you entered the pod. Is that
3 correct?

4 A He had both of them balled into a fist.

5 Q Got it. And because he kept his left hand
6 balled in a fist, you believed that he was in fact
7 carrying a weapon?

8 A Attempting to hide one, yes.

9 Q Understood. Even though he had not used
10 that weapon in the altercation up to that point.

11 A I was unaware of whether a weapon had or had
12 not been used in that altercation.

13 Q Understood. Okay. So I believe that you
14 said the altercation lasted through the 1:46 mark. Is
15 that correct?

16 A 1:42.

17 Q 1:42. Okay.

18 A 1:42 to 1:43, I believe, was the mark that
19 we were looking at.

20 Q Okay. So if maybe we could go to the 1:40
21 mark, could you identify for me between, you know,
22 1:40 and 1:45 where the specific timestamp where you

1 tell or you give the command to Shadow to disengage?

2 A About 1:00 -- I would say somewhere around
3 1:40 to 1:41 is where I give him the command. You can
4 see me bent down there giving the command, and I bent
5 down for -- I -- I bent down earlier to see if I
6 could -- this is where I said I could -- if I could
7 see if there was anything in his hand or in his hands
8 that was balled up in a fist under his chest.

9 I bent down, I couldn't see anything, I
10 then -- I would say around 1:40 and 1:41, I give the
11 verbal command to disengage, and 1:43 he disengages
12 upon his own -- he releases on his own.

13 Q Okay. In your training with Shadow, do you
14 recall how long it would take Shadow to disengage in
15 your training after you give a command?

16 A A couple of seconds.

17 Q Okay.

18 A Because it's congruent with what I'm seeing
19 here.

20 Q Understood. To say that back or just to
21 confirm, Shadow's release time in response to your
22 command, as we have seen on this video, is consistent

1 with Shadow's performance in training?

2 A Yes.

3 Q Understood.

4 A Before we finish the video, can we have
5 about a five-minute bathroom break?

6 Q Oh, of course.

7 A I need to get another water.

8 Q Of course. Is now a good time?

9 A Now is a perfect time.

10 MR. JOHNSON: Okay. Why don't we go
11 off the record, Madam Court Reporter?

12 THE REPORTER: Okay. Off record at
13 3:50 p.m.

14 (Off the record.)

15 THE REPORTER: Okay. We're back on the
16 record at 4:00 p.m. Go ahead.

17 MR. JOHNSON: Thanks.

18 BY MR. JOHNSON:

19 Q Okay. And Officer McCowan, now that we're
20 back from a break, just to confirm as we've been doing
21 all along, did you speak with anybody during yo8ur
22 break about your testimony here today?

1 A No, sir.

2 Q Thank you. So when we last broke, we were
3 discussing the 1:43 mark and the command that you gave
4 Shadow around that time to disengage. And I'd like to
5 talk about from the 1:43 forward just those few
6 seconds that happened. So after the 1:43 mark, can
7 you describe to the 1:46 what's happening?

8 (Video played.)

9 A I'm just backing off of the incident.

10 Q Okay. And are you saying anything to Mr.
11 Johnson at that time?

12 A No.

13 Q Okay. Is Officer Mullins or who is this
14 other officer who has approached what looks to be to
15 the left or behind Mr. Johnson?

16 A Might be -- that is Sergeant Massingill.

17 Q Understood. And do you recall what Sergeant
18 Massingill was saying to Mr. Johnson as he was
19 approaching?

20 A No.

21 Q Okay. Do you recall if he said anything?

22 A No, sir. I -- I don't know. Pods during

1 incidents like this are very loud.

2 Q Okay. And would you say incidents like this
3 are allowed throughout the entirety of the incident?

4 A Yes.

5 Q Okay. And that would include when you first
6 came into the pod when you gave your commands to Mr.
7 Johnson?

8 A Yes.

9 Q Understood. Thank you. So having watched
10 the video again of this incident, I'd like to just
11 maybe ask just a couple of clarifying questions to
12 make sure that I, like, fully understood your
13 testimony here today.

14 So the first question to just kind of
15 clarify is: On the first use of force on Mr. Johnson,
16 which --

17 A There was only one use of force, sir.

18 Q Understood. You deployed your canine twice
19 on Mr. Johnson?

20 A Yes.

21 Q That's what you testified to earlier. Is
22 that correct?

1 A Yes. Well, that was on -- yes. The two
2 deployments, one use of force.

3 Q Understood. Thank you for clarifying. I
4 appreciate that. Thank you. So on the first
5 deployment of Shadow at the 1:15 or 1:16 mark, having
6 seen the video are you able to articulate each
7 consideration that you have in your mind at that
8 moment about why it is that force is justified against
9 Mr. Johnson?

10 A I don't think I understand the question,
11 sir.

12 Q Sure. Having seen the video, does it
13 refresh your recollection at all or make you think of
14 all the reasons that were in your mind as to why you
15 thought the use of force at the 1:15 mark against Mr.
16 Johnson was appropriate?

17 A Yes.

18 Q Can you explain those to me?

19 A After responding, coming into the pod,
20 seeing -- knowing that there is an altercation from
21 the radio call, coming in and seeing Mr. Johnson stand
22 up and walk -- and come towards Officer Mullins

1 with -- at this time still close-fisted. He then -- I
2 deployed canine Shadow.

3 Make sure I am getting everything. Just
4 that. Yeah. So where was I? You were asking me what
5 the reason I deployed to begin with was?

6 Q Yes, sir. So I can repeat the question too,
7 if that would help.

8 A Please. Please. I am -- I am lost at the
9 moment.

10 Q No problem. It's been a long day, and I
11 understand. So it's better that we have it clean, so
12 I appreciate the opportunity to re-ask the question.

13 At the 1:15 mark of the video, and having
14 seen the entire video again of the incident, can you
15 tell me everything that's in your mind regarding why
16 you think it is appropriate to use force against Mr.
17 Johnson?

18 A Oh, okay. I understand now. As I -- this
19 is like I testified before. I had to measure -- at
20 that point, I was measuring what would have been
21 worse? The use of force or the non-use of force?
22 What happens if I don't use that force to stop the

1 situation at hand versus what happens if I don't?

2 That is what I am calculating, basically the
3 entire time. As -- as I'm seeing what's going on as
4 it's happening within those few seconds, I have to
5 measure which one could potentially be worse, the use
6 of or the non-use of force, the potential of what
7 could happen.

8 Q Is there anything else that you were
9 thinking about or specifically considering to help you
10 make that determination?

11 A No, sir.

12 Q And just to be clear, when you say "the use
13 of force or non-use of force," you're referring to the
14 use of force of a canine or the non-use of force of a
15 canine. Is that correct?

16 A Yes.

17 Q Thank you. And --

18 A It's really use of force in general.

19 Q Understood. But as applied to --

20 A Applied to this, canine. Yes.

21 Q Understood. And is there a difference in
22 your mind between how you would use a different force

1 modality than a canine as compared to if the canine
2 was the modality in which you used force?

3 A No.

4 Q Okay. So you would deploy force in the form
5 of a canine in the same way and under the same
6 considerations that you would deploy force for any
7 other type of force that you use?

8 A Yes. If you wanted to roll the counter
9 back, you see Officer Mullins deploy OC as an attempt
10 to get those offenders to -- to stop fighting. He at
11 this point measures the cost of doing something rather
12 than not doing something.

13 He decides to do something in attempt to
14 stop and cause less -- let's see. Let me rephrase
15 that. Let me start over. He measures the cost of
16 doing something versus the cost of not.

17 At that point -- at that point, he deploys
18 OC, and it is ineffective. It's not much different in
19 any form of use of force, whether it be verbal, with
20 chemical agents, non-lethal or lethal.

21 Q Okay. As of the 1:15 mark on the video,
22 were there any other considerations that you were

1 thinking about in helping you determine whether or not
2 you were going to use force or whether or not you were
3 not going to use force?

4 A No. That was -- that is the main -- main
5 reason.

6 Q Is it -- and I apologize for being pedantic.
7 I'm not trying to be difficult. But is it the main
8 reason, meaning there are other reasons, or is it the
9 reason?

10 A It is the reason.

11 Q Okay. So there's no other reasons?

12 A No, sir.

13 Q Thank you.

14 A The -- I'm sorry. To clarify, your question
15 was what was running through my mind at that time, and
16 there was no other reasons? Yes, sir. That -- yes.
17 That is correct. That is the only reason.

18 Q Okay. Thank you. Yep. Okay. I'm going to
19 ask if you'd keep the video just up, but I'm going to
20 just ask a couple questions about a few other kind of
21 related documents. So if you give me just one second
22 here to put them in the --

1 Okay. I apologize for the delay there.
2 What's been pre-marked as Exhibit 10 should be in
3 exhibit share now.

4 (Defense Exhibit 10 was marked for
5 identification.)

6 A It looks as if I'm going to have to close
7 the video and then re-open it.

8 Q Oh, okay. Please do. I apologize. Thank
9 you.

10 A I have it up. Yes, sir.

11 Q Okay. Have you ever seen what's been pre-
12 marked as Defense Exhibit 10?

13 A Yes, sir.

14 Q What is it?

15 A It is a canine bite report.

16 Q What is a canine bite report?

17 A It is a form that we use a reporting to
18 canine operations in the institution and to use in
19 court.

20 Q And is the particular canine bite report
21 that's been marked as Defense Exhibit 10 the bite
22 report that you completed for the incident that we

1 just watched on Defense Exhibit 9 with Mr. Johnson?

2 A Yes.

3 Q Okay. And just to confirm, you authored
4 this report. Is that correct?

5 A Yes. I did.

6 Q Okay. Thank you. Okay. I'm going to
7 now -- it will take just a second -- load what's been
8 pre-marked as Defense Exhibit 11. And just let me
9 know when you get there.

10 (Defense Exhibit 11 was marked for
11 identification.)

12 A Yes.

13 Q Okay. And do you recognize what's been pre-
14 marked as Defense Exhibit 11?

15 A Yes.

16 Q What is it?

17 A It's a Patrol Canine Utilization Report.

18 Q What is a Patrol Canine Utilization Report?

19 A It's quite similar to the bite report and --
20 to the bite report. It's a form -- it's a -- it's
21 actually an older form, I believe. It specifies
22 pretty much every piece of information that you could

1 use from the time that your shift started to the time
2 that y our shift ended. Think of it as it's the paper
3 copy of your DINGO utilization.

4 Q Understood.

5 A It's basic -- it's more or less the same
6 thing, an you add everything that -- everything from
7 the bite report and from your IR, you add to one of
8 these as well. And then you list witnesses and sign.

9 Q Understood. As far as your understanding,
10 is there any reason why incidents would be described
11 differently in a patrol canine utilization report
12 compared to a canine bite report?

13 A No.

14 Q Should the descriptions be nearly identical,
15 if not identical, between a canine bite report and a
16 patrol canine utilization report?

17 A Yes.

18 Q And what's been pre-marked as Defense
19 Exhibit 11 is the Patrol Canine Utilization Report
20 from the May 2nd incident with Mr. Johnson that we
21 just watched on video in Defense Exhibit 9. Is that
22 correct?

1 A Yes.

2 Q Okay. And actually, before we move on from
3 this document I have one quick question for you. It
4 looks like on the first page of this Patrol Canine
5 Utilization Report, it looks like there's a physical
6 signature on this document. Is that correct?

7 A It is.

8 Q Okay. And I know earlier we spoke, and I
9 apologize if I'm misstating, but I believe we spoke
10 that for certain records you have an electronic sign-
11 off and other records, you have a physical sign-off.
12 Is that correct?

13 A Yes. This is the physical.

14 Q And so the Patrol Canine Utilization Report
15 at Exhibit 11 is an example of a report that you still
16 have to sign physically?

17 A Yes.

18 Q Okay. And do you still sign these reports
19 physically today?

20 A Yes.

21 Q Understood. And that is not the case for a
22 canine bite report, however?

1 A No, sir. There is not a space to where you
2 can sign the canine bite report.

3 Q Understood. And do you give an electronic
4 sign-off in DINGO for the canine bite report?

5 A When you -- no.

6 Q Okay.

7 A No. There is not -- there is no e-sign on
8 the DINGO.

9 Q Understood. So you don't electronically
10 sign or physically sign the canine bite report?

11 A The bite report was Exhibit 10. Correct?

12 Q Yes, sir.

13 A I need to go back and look at it.

14 Q No problem. Yeah. Exhibit 10.

15 A No, sir. There is no -- on the paper copy
16 side of things, there is no signature. Although, your
17 name is stated on the top left-hand corner, pretty
18 much all other information is there other than a
19 signature.

20 Q Understood. And does the canine bite report
21 get submitted to your supervisor?

22 A Yes.

1 Q Your direct supervisor or every supervisor
2 in the canine unit?

3 A My direct supervisor. This -- all of this
4 gets sent to several different supervisory units.

5 Q Understood. And by "all of this," do you
6 mean incident report, bite report, patrol canine
7 utilization report?

8 A All of it is placed in one folder and sent.

9 Q Okay. Other than the three documents that I
10 just described, the incident report, patrol canine
11 utilization report, and canine bite report, are there
12 any other reports that you can think of as we sit here
13 today that are included?

14 A The anatomical figure, and the AIR, which
15 is -- both of those are medical forms. They're not
16 necessarily canine.

17 Q Understood.

18 A But they are added in that folder.

19 Q Understood. If you could please, there
20 should be what's been pre-marked as Defense Exhibit 12
21 now in the exhibit share. And it starts with Bates
22 number of Johnson 582 000507.

1 (Defense Exhibit 12 was marked for
2 identification.)

3 A 507?

4 Q Yes, sir.

5 A Yes, sir. That is all correct.

6 Q Okay. So first, have you ever seen what's
7 been marked as Defense Exhibit 12 before?

8 A Yes.

9 Q What is it?

10 A It is the packet that is emailed after a --
11 after an engagement has incurred -- has occurred.
12 This is a packet that canine handlers put together and
13 send to their immediate supervisor. From there, it
14 goes to about a dozen other places.

15 Q Understood.

16 A For investigation.

17 Q Understood. So looking at the second page,
18 that's with Bates stamp ends in 508, the top of the
19 document says "Internal Incident Report." Do you see
20 that?

21 A Yes, sir.

22 Q And is this the incident report that you

1 wrote documenting the incident with Mr. Johnson that
2 we saw in Exhibit 9?

3 A Yes.

4 Q And do you know if Lieutenant Woods or any
5 supervisor altered this report after you wrote it?

6 A I have no knowledge it did. No, sir.

7 Q Do you have a suspicion that the report was
8 changed after you submitted it?

9 A No, sir.

10 Q Okay. If we go to the document that ends in
11 Bates 509, do you recognize this document?

12 A 509? Yes.

13 Q What is it?

14 A This is the -- this is the AIR. This is a
15 medical form that the on-staff RN or LPN fills out.

16 Q Okay. So this is not a form that you
17 complete, but it's a form that's completed by the --

18 A On-staff medical assistants. Yes.

19 Q On-staff medical. Okay. And how do they
20 get the information to complete this form?

21 A The inmate, after the incident, is
22 immediately taken to medical where medical staff treat

1 him, and this is where they get that information.

2 Q Understood. Do you have a conversation with
3 the medical staff or is their information coming from
4 the inmate?

5 A It's a little bit of both.

6 Q Okay. Can you explain what you mean by
7 that?

8 Q So I will -- they get their information
9 from -- they get their information from several
10 different places. Officers that know that there's a
11 fight occurring. Okay?

12 So right here on the first part of
13 description of the incident, she says that the
14 "offender brought to medical due to an altercation."
15 So we -- we -- an officer or somebody or she has heard
16 it over the radio.

17 "3 lacerations to right lower arm/right
18 [sic] area. Multiple puncture sites to right lower
19 arm/wrist. Laceration to left side forehead at
20 hairline. OC utilized."

21 So she is gathering all of her information
22 from officers, inmates, and my -- and if -- and myself

1 if needed.

2 Q Understood. For purposes of this specific
3 report that we're looking at right here at Bates 509,
4 did you provide information to the nurse or are you
5 speculating as to where she got the information?

6 A I -- this is speculation. I didn't provide
7 any information to the nurse at that point in time,
8 but --

9 Q Do you --

10 A I have been asked for information in the
11 past. So -- but not on this particular one.

12 Q Understood. And if you were asked for
13 information in the past, you would provide it to the
14 best of your recollection. Is that right?

15 A Yes, sir.

16 Q But you don't recall in this particular
17 instance for purposes of this particular report
18 whether or not you were asked for information?

19 A No, sir.

20 Q Do you recall or have an awareness of any
21 VDOC officer who provided information for use in this
22 report?

1 A No, sir.

2 Q All right. And I think we can put --
3 actually, one sec. Sorry. Actually, really quickly.
4 The next document down that ends in 510, excuse me.
5 The top has a title of "Anatomical Figure." What is
6 this page we're looking at here?

7 A This is also a medical form that they fill
8 out alongside the AIR.

9 Q Okay. But it's separate from the AIR or is
10 it a part of the AIR?

11 A No. This is separate.

12 Q Okay. And is it your understanding that the
13 nurse completing this anatomical figure would rely on
14 the same information that they use to prepare the AIR
15 to prepare this anatomical figure report?

16 A I don't know, sir. I -- I feel like I would
17 have to speculate.

18 Q Okay. All right. I think we can put this
19 document aside. We're not going to go back to it.
20 There is one other document that I'd like for you to
21 just look at, but I won't question you on.

22 It's been pre-marked as Defense Exhibit 13,

1 and I've moved into the exhibit share now. It's
2 another video of the incident, but I'd like to pull it
3 up and then talk about it for just a second. So let
4 me know when you have what's been marked as Defense
5 Exhibit 13.

6 (Defense Exhibit 13 was marked for
7 identification.)

8 A I have it pulled up.

9 Q Okay. Could you press play on what's been
10 marked as Defense Exhibit 13 and watch for a few
11 seconds to get some context?

12 (Video played.)

13 A Yes.

14 Q Have you ever seen before what's been pre-
15 marked as Defense Exhibit 13?

16 A Yes.

17 Q And what is it?

18 A This is a video of the incident with Mr.
19 Johnson.

20 Q Okay. And does this video show the same
21 incident that we watched in Defense Exhibit 9 but from
22 a different camera angle in the pod?

1 A Yes.

2 Q Okay. Do you have any reason to think that
3 the videos are different in any way?

4 A Not to my knowledge. No, sir.

5 Q Okay. Thank you. All right. And I just
6 moved into -- apologies. My computer is slow for a
7 second. I just moved into the chat -- it's taking
8 just a moment -- but what's been pre-marked as Defense
9 Exhibit 14. It should be up in just a moment. And
10 just let me know when you have it up.

11 (Defense Exhibit 14 was marked for
12 identification.)

13 A Yes, sir.

14 Q Okay. And have you ever seen what's been
15 pre-marked as Defense Exhibit 14?

16 A Yes, sir.

17 Q What is it?

18 A These are pictures of the engagement. Are
19 you talking about 14 or 13?

20 Q Fourteen. I apologize if I misspoke.

21 A Fourteen. Yeah. I think you said "13."

22 Q Oh, I --

1 A Fourteen is pictures of the engagement.

2 Q Understood. Thank you. Apologies. And
3 just for clarify, Defense Exhibit 14 is pictures of --
4 let's go one by one actually. So it's hard to see,
5 but it starts off with in the bottom-right, there is a
6 very small print in pink of a Bates number that I
7 believe starts with 109. It's just below the yellow
8 tag. Sorry about --

9 A That's what it appears to be, yes.

10 Q Okay. So starting on that, let's start with
11 that picture that ends in 109. It appears to be a
12 pair of pants that Mr. Johnson was wearing at the time
13 of the incident. Is that your understanding?

14 A No, sir.

15 Q Okay. What is your understanding of --

16 A That is the pair of pants that Mr. Guy was
17 wearing. This is a picture that I took of Baker's
18 engagement.

19 Q Understood. So if we look at pictures 109,
20 110. Picture 110 is Mr. Guy. Is that correct?

21 A Yes, sir.

22 Q Okay. And the rest of the pictures in this

1 exhibit are all pictures of Mr. Guy's injuries after
2 the incident with Mr. Johnson. Is that correct?

3 A Yes, sir.

4 Q Okay. And just to confirm, none of the
5 pictures in Exhibit 14 relate to Mr. Johnson. Is that
6 correct?

7 A I'm sorry? Can you repeat that, sir?

8 Q Sure. None of the pictures in Exhibit 14
9 are Mr. Johnson or his clothing. Is that correct?

10 A No, sir.

11 Q Are any of the pictures in Exhibit 14
12 pictures of Mr. Johnson's wounds?

13 A Yes. Yes, sir. I believe the numbers are
14 114, 115, 116, 117, and 118 are all of Mr. Johnson.
15 Numbers 109, 10, 11, 12, 13 are of Mr. Guy.

16 Q Understood. Than you. And you took the
17 pictures of Mr. Guy. Is that correct?

18 A Yes, sir. I did.

19 Q Do you know who took the pictures of Mr.
20 Johnson?

21 A Officer Baker.

22 Q Do you know who the individual in 115 who

1 appears to be providing treatment to Mr. Johnson?

2 A I do not.

3 Q Okay. I have one more question and then if
4 it's okay with you, Tim, and Officer McCowan, I'm
5 going to ask to take just a five-second break. I can
6 go back through my notes and just make sure I've hit
7 everything, but I think at least for our purposes
8 we're getting pretty close here. So I really
9 appreciate your time, Officer McCowan and for bearing
10 through this.

11 Are you aware of prison systems outside of
12 VDOC utilizing canines for patrol purposes?

13 A I am not aware. No, sir.

14 Q Okay.

15 MR. JOHNSON: Okay. If it's okay with
16 you, Officer McCowan, and Tim, could we take five
17 minutes and then we'll come back on the record and
18 I'll let you know if I have any more questions, but I
19 think we may be pretty close to, on our questioning,
20 wrapping up?

21 MR. DAVIS: We can do that.

22 MR. JOHNSON: Great. Well, let's go

1 off the record, Madam Court Reporter.

2 THE REPORTER: Okay. We're off the
3 record at 4:36 p.m.

4 (Off the record.)

5 THE REPORTER: Okay. We're back on the
6 record at 4:46 p.m.

7 MR. JOHNSON: Thank you.

8 BY MR. JOHNSON:

9 Q So Officer McCowan, I did want to ask one
10 follow-up question relating to the incident with Mr.
11 Johnson that we saw in Exhibit 9. Did you ever have
12 any knowledge or belief that Mr. Guy had a weapon when
13 he was engaged with Mr. Johnson?

14 A No, sir. I was at that point unaware of
15 whether or not there was a weapon confirmed or not.

16 Q Understood. And that applied to Mr. Guy as
17 well? You were unaware?

18 A No. It was -- yes, sir. I was unaware of
19 either -- whether either of those had a weapon.

20 Q Understood. Did you ever become aware,
21 either during the incident or after, if Mr. Guy in
22 fact had a weapon on him?

1 A No, sir. I was not. I don't believe that,
2 to my best recollection, that there was a weapon
3 found. But whether or not he actually one on his --
4 in his possession at some point in time, no, sir. I
5 do not.

6 Q Understood. Thank you. Okay. I don't
7 believe you mentioned this at the outset, but I do
8 want to confirm. Are you a reservist or in the
9 military?

10 A No, sir.

11 Q Is there any reason that you can think of
12 sitting here today that you are not going to be
13 available for trial in this matter in January of 2023?

14 A Not that I know of. Nothing that I know of,
15 sir.

16 Q Understood.

17 MR. JOHNSON: Tim, that's all the
18 questions that I have at the moment.

19 MR. DAVIS: Okay. I guess --

20 MR. JOHNSON: And I'll just --

21 MR. DAVIS: If we can excuse Mr.
22 McCowan and the court reporter, we can follow-up after

1 we get off the record.

2 MR. JOHNSON: Sure. Yeah. You don't
3 have any questions for the witness?

4 MR. DAVIS: I do not.

5 MR. JOHNSON: Okay. Great. Well then,
6 as the plaintiffs, we don't have any further questions
7 for the witness.

8 THE REPORTER: Okay. Mr. Davis, do you
9 want to give Mr. McCowan a chance to read and sign his
10 transcript?

11 MR. DAVIS: Yes. Do you know how long
12 that would be to get that to him?

13 THE REPORTER: I'm not exactly sure. I
14 would guess seven to ten days.

15 MR. DAVIS: Mr. McCowan, would you like
16 an opportunity to review your transcript to see that
17 it's accurate?

18 THE WITNESS: Yes, sir.

19 THE REPORTER: Okay. We'll do that and
20 then when we go offline, I just wanted to ask you who
21 would like to place an order and that kind of thing,
22 and I may have a couple of spelling questions. Okay?

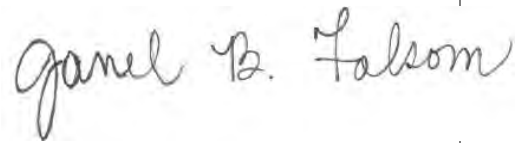
1 If that's going to be all, then we're
2 off the record at 4:49 p.m.

3 (Signature reserved.)

4 (Whereupon, at 4:49 p.m., the
5 proceeding was concluded.)

CERTIFICATE OF DEPOSITION OFFICER

I, JANEL FOLSOM, the officer before whom the foregoing proceedings were taken, do hereby certify that any witness(es) in the foregoing proceedings, prior to testifying, were duly sworn; that the proceedings were recorded by me and thereafter reduced to typewriting by a qualified transcriptionist; that said digital audio recording of said proceedings are a true and accurate record to the best of my knowledge, skills, and ability; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.



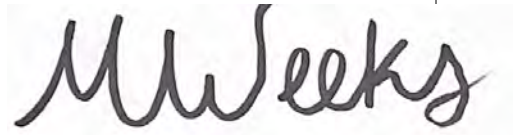
JANEL FOLSOM

Notary Public in and for the
Commonwealth of Virginia

☒ Review of the transcript was requested.

CERTIFICATE OF TRANSCRIBER

I, MEREDITH WEEKS, do hereby certify that this transcript was prepared from the digital audio recording of the foregoing proceeding, that said transcript is a true and accurate record of the proceedings to the best of my knowledge, skills, and ability; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

A handwritten signature in dark ink, appearing to read "MWeeks", is written over a light gray rectangular background.

MEREDITH WEEKS

1 Timothy Davis, Esquire

2 tdavis@oag.stat.va.us

3 June 23, 2022

4 RE: Johnson, Corey E. v. McCowan, Canine Officer Et Al
5 6/8/2022, Brian McCowan (#5267183)

6 The above-referenced transcript is available for
7 review.

8 Within the applicable timeframe, the witness should
9 read the testimony to verify its accuracy. If there are
10 any changes, the witness should note those with the
11 reason, on the attached Errata Sheet.

12 The witness should sign the Acknowledgment of
13 Deponent and Errata and return to the deposing attorney.
14 Copies should be sent to all counsel, and to Veritext at
15 erratas-cs@veritext.com.

16
17 Return completed errata within 30 days from
18 receipt of transcript.

19 If the witness fails to do so within the time
20 allotted, the transcript may be used as if signed.

21
22 Yours,

23 Veritext Legal Solutions
24
25

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Brian McCowan (#5267183)

E R R A T A S H E E T

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REASON_____

Brian McCowan

Date

1 Johnson, Corey E. v. McCowan, Canine Officer Et Al

2 Brian McCowan (#5267183)

3 ACKNOWLEDGEMENT OF DEPONENT

4 I, Brian McCowan, do hereby declare that I
5 have read the foregoing transcript, I have made any
6 corrections, additions, or changes I deemed necessary as
7 noted above to be appended hereto, and that the same is
8 a true, correct and complete transcript of the testimony
9 given by me.

10
11 _____
12 Brian McCowan

_____ Date

13 *If notary is required

14 SUBSCRIBED AND SWORN TO BEFORE ME THIS

15 _____ DAY OF _____, 20____.

16
17 _____
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19 NOTARY PUBLIC
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Rules of Supreme Court of Virginia
Part Four - Pretrial Procedures
Depositions and Production at Trial
Rule 4.5

(e) Submission to Witness; Changes; Signing.

When the testimony is fully transcribed, the deposition shall be submitted to the witness for examination and shall be read to or by him, unless such examination and reading are waived by the witness and by the parties. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness within 21 days of its submission to him, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed unless on a motion

to suppress under Rule 4:7(d)(4) the court holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

DISCLAIMER: THE FOREGOING CIVIL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY. THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE STATE RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS
COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

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